MONTANA
ADMINISTRATIVE
REGISTER

ISSUE NO. 12 – JUNE 27, 2025

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MONTANA
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BOARD OF PUBLIC EDUCATION

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-215.1

Summary

Amendment of ARM 10.63.110 and adoption of NEW RULE 1 pertaining to Early Numeracy Integration and Early Childhood Education Standards

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Hearing Date and Time

Friday, July 18, 2025, at 2:00 p.m.

Virtual Hearing Information

Please click the link below to join the webinar:

https://mt-gov.zoom.us/j/81441368113

Comments

Comments must be received by Friday, July 25, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, July 11, 2025, at 5:00 p.m.

Contact

McCall Flynn
(406) 444-6576
bpe@mt.gov

General Reasonable Necessity Statement

The Board of Public Education proposes to adopt NEW RULE 1 and to amend ARM 10.63.110 to revise the Early Childhood Education Standards to comply with HB 338 (2025) prior to the 2025-26 school year. The Early Literacy Advisory Council, created by the Board of Public Education, recommended the proposed rule in order to address the short turnaround between the end of the legislative session and start of the upcoming school year, while maintaining the intent of the legislation, which was to increase the number of children who are proficient in reading and math at the end of third grade. NEW RULE 1 will be adopted as ARM 10.54.903.

Rulemaking Actions

AMEND

The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

10.63.110 EARLY LEARNING DEVELOPMENTAL DOMAINS AND CONTENT STANDARDS

(1) The following early learning developmental domains represent the foundational skills all students need to be successful learners. The development of communication, language, and literacy skills supports the growth in all other domains of development. All developmental domains are applicable for public preschool programs and early ~~literacy~~ targeted interventions implemented through the classroom-based program for 4-year-olds and summer jumpstart program preceding kindergarten.

(a) The language domain includes communication and comprehension in oral and written language.

(i) Language instruction includes opportunities for students to develop:

(A) receptive language, wherein students use listening and observation skills to make sense of and respond to spoken language and other forms of communication; enter into the exchange of information around what is seen, heard, and

experienced; and begin to acquire an understanding of the concepts of language that contribute to learning;

(B) expressive language, wherein students develop skills in using sounds, facial expressions, gestures, and words, such as to help others understand their needs, ask questions, express feelings and ideas, and solve problems;

(C) social language, wherein students develop skills to interact and communicate with others in effective ways; and

(D) support for dual language speakers, wherein students receive support in their home language(s) while becoming proficient in English.

(ii) Literacy instruction includes opportunities for students to develop:

(A) written language, wherein students build an understanding and interest in the symbols, sounds, and rhythms of written language and develop awareness that the printed word can be used for various purposes;

(B) written communication, wherein students develop interest and skill in using symbols as a meaningful form of communication;

(C) print awareness, wherein students build an understanding that print carries a message through symbols and words and that there is a connection between sounds and letters (the alphabetic principle); and

(D) speech development, wherein students develop an awareness of the sounds of letters and the combination of letters that make up words and use this awareness to manipulate syllables and sounds of speech.

(b) The social and emotional domain includes culture, family, community as well as social and emotional development.

(i) Culture, family, and community skills instruction includes opportunities for students to develop:

(A) an awareness of and appreciation for similarities and differences between themselves and others;

(B) an awareness of the functions and diverse characteristics of families; and

(C) an understanding of the basic principles of how communities function, including work roles and commerce.

(ii) Social development skill instruction includes opportunities for students to:

(A) develop trust, emotional bonds, and interact comfortably with adults;

(B) interact and build relationships with peers; and

(C) develop skills in cooperation, negotiation, and empathy.

(iii) Emotional development skills instruction includes opportunities for students to:

(A) develop an awareness and appreciation of self as a unique, competent, and capable individual;

(B) demonstrate a belief in their abilities;

(C) manage internal states, feelings, and behavior, and develop the ability to adapt to diverse situations and environments; and

(D) express a wide and varied range of feelings through facial expressions, gestures, behaviors, and words.

(c) The physical domain includes development of motor skills and instruction in health, safety, and personal care.

(i) Motor skills instruction includes opportunities for students to develop:

(A) small muscle strength, coordination, and skills;

(B) large muscle strength, coordination, and skills; and

(C) use of their senses to explore the environment and develop skills through sight, smell, touch, taste, and sound.

(ii) Health, safety, and personal care skills instruction includes opportunities for students to develop:

(A) personal health and hygiene skills as they develop and practice self-care routines;

(B) healthy eating practices by eating a variety of nutritional foods;

(C) healthy behaviors through physical activity; and

(D) an awareness and understanding of safety rules as they learn to make safe and appropriate choices.

(d) The cognitive domain includes approaches to learning.

(i) Approaches to learning skills instruction include opportunities for students to develop:

(A) curiosity through imagination, inventiveness, originality, and interest as they explore and experience new things;

(B) initiative and self-direction through engagement in new tasks and to take risks in learning new skills or information;

(C) persistence and attentiveness with the ability to focus their attention and concentration to complete tasks and increase their learning;

(D) reflection and interpretation skills in thinking about their learning in order to inform their future decisions; and

(E) reasoning skills in causation, critical and analytical thinking, problem solving, and representational thought.

(2) The following early learning content standards are aligned to the Montana K-12 Content Standards and highlight what students should know, understand, and be able to do upon entering kindergarten. All early learning content standards are applicable for public preschool programs while only the English Language Arts and Literacy and Mathematics and Numeracy Content Standards apply to early ~~literacy~~ targeted interventions implemented through the classroom-based program for 4-year-olds and summer jumpstart program preceding kindergarten.

(a) English Language Arts and Literacy standards include:

(i) early reading, wherein students develop an understanding, skill, and interest in alphabet knowledge using the symbols, sounds, and rhythms of written language;

(ii) print development and writing, wherein students demonstrate interest and skill in using symbols as a meaningful form of communication;

(iii) speaking and listening, wherein students use phonemic and phonological awareness to identify and play with individual sounds in spoken words; and

(iv) language, wherein students develop the ability to communicate with others to build relationships, share meaning, and express needs.

(b) Creative arts standards include:

(i) creative movement wherein students produce rhythmic movements spontaneously and in imitation with growing technical and artistic abilities;

(ii) drama, wherein students show appreciation and awareness of drama through observation, imitation, and participation in simple dramatic plots;

(iii) music, wherein students engage in a variety of musical or rhythmic activities; and

(iv) visual arts, wherein students demonstrate a growing understanding and appreciation for the creative process and visual arts.

(c) Mathematics and numeracy standards include:

(i) number sense and operations, wherein students develop the ability to think and work with numbers, to understand their uses, and describe their relationships through structured and everyday experiences;

(ii) measurement concepts, wherein students use measurement instruments to explore and discover measurement relationships and characteristics, such as length, quantity, volume, distance, weight, area, and time;

(iii) mathematical skills in data analysis, wherein students count, sort, and compare objects;

(iv) initial algebraic thinking and operations, wherein students identify, describe, produce, and create patterns using mathematical language and materials; and

(v) geometric and spatial reasoning, wherein students build the foundation for recognizing, creating, and manipulating shapes, and learning spatial reasoning and directional words as they become aware of their bodies and personal space in their physical environment.

(d) Science standards include:

(i) scientific thinking and the use of the scientific methods through investigation using their senses to observe, manipulate objects, ask questions, make predictions, and develop conclusions and generalizations;

(ii) an understanding of and compassion for living things;

(iii) an understanding of the physical world, the nature and properties of energy, and nonliving matter;

(iv) an understanding of the earth and planets; and

(v) an understanding of engineering as the process that assists people in designing and building.

(e) Social studies standards include:

(i) an understanding of the concept of historical time, including past, present, and future;

(ii) knowledge of geographical places and regions by understanding that each place has its own unique characteristics and the reciprocal effect individuals have with the world around them; and

(iii) awareness of their natural world, including the environment and our interdependence on the natural world.

(f) Technology standards include:

(i) an understanding of technology with awareness of technological tools and developmentally appropriate exploration of the ways to use these resources.

Authorizing statute(s): Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, 20-7-1803, MCA

Implementing statute(s): Mont. Const. Art. X, sec. 9, 20-7-101, 20-7-117, 20-7-1803, MCA

ADOPT

The rule proposed to be adopted is as follows:

NEW RULE 1 (10.54.903) EARLY NUMERACY INTEGRATION FOR 2025-26 SCHOOL YEAR

(1) A local school district that administered the evaluation methodology for early literacy targeted interventions in accordance with ARM 10.54.901 in preparation for the 2025-2026 school year may admit qualified students in the classroom-based program for 4-year-olds.

(2) The early targeted interventions may include both English Language Arts and Literacy and Mathematics and Numeracy Content Standards as described in ARM 10.63.110(2).

Authorizing statute(s): Mont. Const. Art. X, sec. 9, 20-2-114, 20-7-101, 20-7-1803, MCA

Implementing statute(s): Mont. Const. Art. X, sec. 9, 20-7-101, 20-7-117, 20-7-1803, MCA

Small Business Impact

The board adopts rules that primarily impact teachers, administrators, and school district operations. The board works in cooperation with public schools across the state to implement the rules that are adopted. Given that the board does not work directly with small businesses, the small business impact analysis performed as required indicates that no small businesses are likely to be directly impacted by the proposed rule changes.

Bill Sponsor Notification

The bill sponsor contact requirements apply and have been fulfilled. The primary bill sponsor was contacted by email on May 7, 2025.

Interested Persons

The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, email, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by email unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person above or may be made by completing a request form at any rules hearing held by the board.

Rule Reviewer

McCall Flynn

Approval

Dr. Tim Tharp

Board Chair

MONTANA
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REGISTER

DEPARTMENT OF COMMERCE

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-214.1

Summary

Amendment of ARM 8.94.3730 pertaining to the Affordable Housing Development and Rehabilitation Application Guidelines of the Community Development Block Grant Program

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Hearing Date and Time

Thursday, July 17, 2025, at 10:00 a.m.

Virtual Hearing Information

The Department of Commerce will hold a public hearing via zoom to consider the proposed amendment of the above-stated rule.

Video: https://mt-gov.zoom.us/j/87986050136?pwd=TB5Jm7xWyt8wUeGmzhjGj1oClZ02jL.1

Comments

Interested persons may submit data, views, or arguments orally at the Zoom hearing. Written data, views, or arguments may also be submitted to Jada Maynor by email: DOCadministrativerules@mt.gov; or by mail: P.O. Box 200501, Helena, MT 59620. Comments must be received by Friday, July 25, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, July 10, 2025, at 5:00 p.m.

Contact

Jada Maynor
(406) 841-2596
jada.maynor@mt.gov

General Reasonable Necessity Statement

The Department of Commerce proposes to adopt by reference the updated 2025 Community Development Block Grant (CDBG) Affordable Housing Development and Rehabilitation Application Guidelines and incorporate as rules of the department. The CDBG Program is a U.S. Department of Housing and Urban Development (HUD) pass-through grant program that provides funding to communities for planning, public and community facilities, and the preservation of affordable homes for Montanans. Updates to the application guidelines are intended to streamline the process for communities to apply for CDBG funds to support affordable housing efforts. The updates reduce the application from 82 questions, which were redundant or irrelevant, to 22 key questions that will better assist staff in making recommendations to department leadership for CDBG-Housing awards. The proposed application guidelines can be accessed at https://commerce.mt.gov/Infrastructure-Planning/Programs-and-Services/Community-Development-Block-Grant/Community-Development-Block-Grant-Housing.

Rulemaking Actions

AMEND

The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

8.94.3730 INCORPORATION BY REFERENCE OF RULES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – AFFORDABLE HOUSING DEVELOPMENT AND REHABILITATION PROJECTS APPLICATION ~~AND~~ GUIDELINES

(1) The Department of Commerce adopts and incorporates by reference the Affordable Housing Development and Rehabilitation Application ~~and~~ Guidelines as rules for the administration of the Community Development Block Grant (CDBG) Program (~~July 2022~~2025).

(2) The rules incorporated by reference in (1) relate to the scope and procedures for applying and awarding grants to cities, towns, counties, and consolidated governments.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Community MT, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the ~~Community MT's~~ department's website at ~~https://comdev.mt.gov/Programs-and-Boards/Community-Development-Block-Grant-Program/Housing~~ https://commerce.mt.gov/Infrastructure-Planning/Programs-and-Services/Community-Development-Block-Grant/Community-Development-Block-Grant-Housing.

Authorizing statute(s): 90-1-103, MCA

Implementing statute(s): 90-1-103, MCA

Small Business Impact

The Community Development Block Grant (CDBG) Program provides grants to eligible Montana cities, towns, and counties, rather than to small businesses. Since CDBG does not award grants directly to any small businesses, the small business impact analysis performed as required indicates that no small businesses are likely to be directly impacted by the proposed rule change. There is no direct impact to small businesses by the proposed rule change and no further impact analysis is needed.

Bill Sponsor Notification

The bill sponsor contact requirements do not apply.

Interested Persons

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person above or may be made by completing a request form at any rules hearing held by the department.

Rule Reviewer

Patrick Quinn

Approval

Mandy Rambo, Acting Director

MONTANA
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DEPARTMENT OF ENVIRONMENTAL QUALITY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-174.1

Summary

Amendment of ARM 17.8.1214 and 17.8.1224 pertaining to the Removal of Affirmative Defense Provisions in Title V Permits and Administrative Rules

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No Hearing Scheduled

If the agency receives requests for a public hearing on the proposed rulemaking from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed rulemaking; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

The estimated number of persons directly affected by the proposed rulemaking is 800.

Comments

Comments may be submitted using the contact information below. Comments must be received by Friday, July 25, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, July 18, 2025, at 5:00 p.m.

Contact

Legal Unit
(406) 444-1388
DEQrulemaking174@mt.gov

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

17.8.1214 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO THE PERMIT SHIELD AND EMERGENCIES

(1) through (4) remain the same.

~~(5) An emergency constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation if the conditions of (6) and (7) are met.~~

~~(6) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:~~

~~(a) an emergency occurred and that the permittee can identify the cause(s) of the emergency;~~

~~(b) the permitted facility was at the time being properly operated;~~

~~(c) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and~~

~~(d) the permittee submitted notice of the emergency to the department within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirements of ARM 17.8.1212(3)(c) . This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.~~

~~(7) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.~~

~~(8) The provisions in (5) through (7) are in addition to any emergency, malfunction or upset provision contained in any applicable requirement.~~

Authorizing statute(s): 75-2-217, 75-2-218, MCA

Implementing statute(s): 75-2-217, 75-2-218, MCA

Reasonable Necessity Statement

On July 12, 2023, the Environmental Protection Agency (EPA) removed emergency affirmative defense provisions from the Clean Air Act operating permit program (Title V) by striking 40 CFR 70.6(g). To comply with EPA's final rule found in the Federal Register, *see* 88 Fed. Reg. 47,029–54 (July 21, 2023), the department must amend ARM 17.8.1214 by striking (5) through (8) and amend ARM 17.8.1224 to delete a reference to ARM 17.8.1214(5).

17.8.1224 ADDITIONAL REQUIREMENTS FOR OPERATIONAL FLEXIBILITY AND AIR QUALITY OPERATING PERMIT CHANGES THAT DO NOT REQUIRE REVISIONS

(1) through (5) remain the same.

(6) The permit shield authorized by ARM 17.8.1214 shall not apply to changes made pursuant to (3) ~~and (5)~~ , but is applicable to terms and conditions that allow for increases and decreases in emissions pursuant to (4).

(7) remains the same.

Authorizing statute(s): 75-2-217, MCA

Implementing statute(s): 75-2-217, 75-2-218, MCA

Reasonable Necessity Statement

The department is proposing amending ARM 17.8.1224(6) because of the amendments to ARM 17.8.1214.

Small Business Impact

The department has determined that the class or group of businesses that will be affected by this proposed rulemaking are the industrial facilities that hold air quality Title V operating permits.

The department does not believe the proposed rulemaking will have a significant and direct impact on small businesses. The department has a completed small business impact analysis, which is available upon request.

Bill Sponsor Notification

The bill sponsor contact requirements do not apply.

Interested Persons

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact above or may be made by completing a request form at any rules hearing held by the department.

Rule Reviewer

Jonathan Morgan

Approval

Sonja Nowakowski, Director

MONTANA
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BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-125.1

Summary

Rule changes following Red Tape Relief Initiative review and to implement House Bill 615 (2023)

Hearing Date and Time

Thursday, July 24, 2025, at 9:00 a.m.

Virtual Hearing Information

A public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting: https://mt-gov.zoom.us/j/88191488114

Meeting ID: 881 9148 8114; Password: 802170

Dial by Telephone +1 646 558 8656

Meeting ID: 881 9148 8114; Password: 802170

Comments

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received by Friday, July 25, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, July 17, 2025, at 5:00 p.m.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

General Reasonable Necessity Statement

In support of the Governor's Red Tape Relief Initiative, the Department of Labor and Industry (department) is conducting comprehensive reviews of the administrative rules of the professional licensing boards and programs administratively attached to the department. This review focuses on updating rules to current standards and procedures, and eliminating unnecessary, redundant, and overburdensome regulations and those duplicated in statute. Other suggested changes replace out-of-date terminology for current language and processes, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use for customers and staff. The streamlined rules will increase department efficiencies by further standardizing procedures used among all licensing boards and programs.

The 2023 Montana Legislature enacted Chapter 220, Laws of 2023 (House Bill 615), an act revising requirements for professional liability insurance for real estate broker and salesperson licensees. The bill became effective April 24, 2023, and is codified at 37-51-325, MCA. It is reasonably necessary to adopt NEW RULE 5 to implement the bill.

The board determined it is reasonably necessary to amend four rules, repeal 14 rules, and adopt five rules to align with the Red Tape Relief Initiative. Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority. If additional specific bases for a proposed action exist, the board will identify those reasons immediately following the specific rule.

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.210.301 DEFINITIONS

The terms used in this chapter ~~shall~~ have their common ~~meaning as~~ meanings used in the real estate industry, and unless ~~the~~ context otherwise requires, the following meanings ~~shall~~ also apply:

~~(1) "Act" shall include a failure to act.~~

~~(2)~~(1) "Advertising" means information, in whatever form, used to promote real property for sale, lease, rent, exchange, or purchase, or to promote the brokerage or sales services of a licensee, ~~except that~~ but does not include the dissemination of property data to an individual prospective buyer or seller at the individual's request ~~shall not be deemed advertising for the purpose of these rules~~.

~~(3)~~(2) "Agency" or "agency relationship" ~~shall include those~~ includes relationships ~~which are expressed~~ described in 37-51-102 and 37-51-313, MCA, ~~and specifically do not include~~ but not the common law of agency.

~~(4)~~(3) "Agent" ~~shall include~~ includes subagent.

~~(5)~~(4) "Agricultural," "farm," and "ranch" ~~shall include~~ means real estate parcels over 40 acres in size, principally used for, or capable and intended for use in, the production of plant or animal crops.

~~(6)~~(5) "Buy" or "buyer" ~~shall include~~ means purchase, purchaser, lease, lessee, and like terms.

~~(7) "Closed transaction" means a transaction in which parties have performed all duties in the agreement. In the case of a lease, it would be at the signing of the lease.~~

~~(8) "Commercial property" shall include real estate that is principally used for, or capable and intended for use in, the production, distribution, or sale of goods or services, and any real estate which has over four residential units when transferred as a group of units.~~

~~(9) "Course provider" is a board-approved entity that is responsible to the board for the administration of approved education courses in accordance with board laws and rules.~~

~~(10)~~(6) "Designated broker" is a broker ~~who has been~~ designated by other brokers of a ~~real estate~~ brokerage company ~~to be the broker~~ with the authority ~~for the maintenance of~~ to maintain a trust account, if any.

~~(11)~~(7) "Distance education" is a course or courses in which the instruction ~~does not take place in a traditional classroom setting, but rather,~~ occurs through ~~other~~ media where the teacher and student are separated by distance and sometimes by time.

~~(12) "Electronic records" may include checks and bank statements.~~

~~(13)~~(8) "Entry-only listing" is a listing ~~in which~~ where the seller and the seller's agent have agreed to limit the seller agent's involvement in the transaction process.

~~(14)~~(9) "Hour" of education is equal to 50 minutes of instructional time.

~~(15) "Incapacity" as used in ARM 24.210.601, means being in a condition as a result of accident or illness that renders the person wholly incapable of conducting the business of a supervising broker. A voluntary or anticipated incapacity or an extended absence from the supervising broker's office is not an incapacity.~~

~~(16) "Internet" means the Internet, the World Wide Web, or Internet-based electronic information distribution networks, and any derivative delivery systems or evolutions of such delivery systems that may be connected to individual computers, terminals, and other consumer electronic interface devices through which information is delivered via computer servers connected via phone lines or other cable, wire, fiber, wireless, or other analogous linkages to a computer, computer network or networks including, but not limited to, web pages, e-mail, news groups, discussion lists, bulletin boards, instant messaging, chat rooms, voice over net, multimedia advertising, links, and/or banner advertisements.~~

~~(17) "Internet advertising" means advertising conducted via the Internet.~~

~~(18) "Licensee" shall include anyone who has been issued a license by the board or who has made application for a license from the board. For disciplinary purposes, "licensee" also includes anyone with a lapsed or expired license.~~

~~(19) "Licensee identification" as used in this chapter means a written disclosure of the licensee's name, and identifying that the advertisement is made by a real estate licensee or by a brokerage company.~~

~~(20)~~(10) "Maintenance service" means any entity hired to perform repairs or maintenance on the property.

~~(21) "Personal funds" means funds other than trust funds, which belong to the licensee. Uses may include, but are not limited to:~~

~~(a) trust account maintenance;~~

~~(b) financial institution fees;~~

~~(c) designated interest earnings; and~~

~~(d) purchasing checks.~~

~~(22) "Personal indebtedness" means the licensee's personal expenses debited from a trust account, including, but not limited to:~~

~~(a) personal bills or expenses;~~

~~(b) recreational expenditures;~~

~~(c) personnel wages, benefits, and incentives; and~~

~~(d) business operating expenses.~~

~~(23)~~(11) "Principal" ~~shall include~~ includes the seller or buyer with whom ~~the~~ an agent has a contract in a real estate transaction~~. It shall include~~ and a property owner with whom ~~the~~ an agent has a contract in property management activity.

~~(24)~~(12) "Seller" ~~shall include~~ includes vendor, lessor, and like terms.

~~(25) "Supervising broker" is a broker who is responsible for supervision and training of one or more licensed salespersons pursuant to 37-51-302, MCA.~~

~~(26)~~(13) "Supervision" ~~shall include~~ means substantially day-to-day, active overseeing.

~~(27)~~(14) "Third-party" ~~shall include~~ means any person who is not the principal or agent.

~~(28)~~(15) "Transaction" means a listing, sale, lease, or exchange.

~~(29)~~(16) "Trust funds" are all monies belonging to others and accepted by a licensee, while acting in the capacity of a licensee.

Authorizing statute(s): 37-1-131, 37-51-203, MCA

Implementing statute(s): 37-1-131, ~~37-1-136,~~ 37-51-103, 37-51-204, 37-51-301, 37-51-302, 37-51-303, 37-51-306, 37-51-309, 37-51-313, 37-51-314, 37-51-315, 37-51-321, 37-51-324, 37-51-401, MCA

Reasonable Necessity Statement

It is reasonably necessary to strike the definition of “act” as the term is not used anywhere in current board rules. The board is removing the definition of “closed transaction” as everyone applying under ARM 24.210.611 understands the meaning and the definition adds nothing to the current industry meaning. It is reasonable to eliminate the definition of “commercial property” as the term is not used in statute or rule.

The board is striking (9) as the term “course provider” only occurs in ARM 24.210.660 regarding prelicensing education and the definition adds nothing to the generally accepted common definition.

It is no longer necessary to have special definitions for “Internet” and “Internet advertising” as Internet is a commonly used and accepted term today. The board is striking the definition of “licensee identification” and relocating it to ARM 24.210.430 as the term is only utilized in that rule. The board is striking (12) because there are many types of acceptable electronic records, and it is not necessary to attempt to list them all in rule. The board is striking “licensee” as it is common sense that someone holding a board license is a licensee. The definition adds nothing to the generally accepted definition.

The board is striking (15) and clarifying in ARM 24.210.601 that a supervising broker’s incapacity must be involuntary and unanticipated.

It is reasonably necessary to delete definitions of “personal funds” and “personal indebtedness” as these terms are used only in ARM 24.210.426. The rule text is descriptive enough and these separate definitions add nothing to their current industry meanings. The board is striking “supervising broker” as the term is adequately defined and described in 37-51-102(24) and 37-51-302(4), MCA.

24.210.602 EXAMINATIONS

(1) Applicants must complete a board-approved national examination and a Montana-based examination for licensure.

(2) ~~License examinations may be held at such times and places determined~~ The state-based examination is created, updated, and administered by an examination provider contracted by the board.

~~(2)~~(3) ~~The~~ Applicants taking an examination must abide by rules established by the examination provider ~~shall be obeyed by all persons taking an examination. A violation of the examination provider's rules may result in imposition of any sanction found in 37-1-312, MCA~~.

~~(3) The board may, from time to time, review and amend the examination type, format, and the score upon which the pass or fail determination is made.~~

~~(4) All test scores may be scaled and equated for the specific examination by the testing agency that provides or administers the examination. Candidates for licensure must take a board-approved examination and make a passing score as determined by a psychometrically sound, criterion-related method associated with assessment of minimal competence. The method used shall be published prior to the administration of the examination.~~

(4) Salesperson licensure examinations will test applicants on subjects outlined in ARM 24.210.660(10).

Authorizing statute(s): 37-1-131, 37-51-203, MCA

Implementing statute(s): 37-1-131, ~~37-1-312, 37-1-316, 37-51-202,~~ 37-51-302, 37-51-303, MCA

Reasonable Necessity Statement

The board is amending this rule to align with the current processes for the administration of the board's required licensure examinations. The board is adding (4) to provide a reference to the subject matter covered in the salespersons' examination per 37-51-303, MCA.

24.210.624 INACTIVE LICENSES

(1) ~~A licensed broker or salesperson~~ Licensed brokers and salespersons not engaged in licensed activities may place ~~the licensee's license~~ their licenses on inactive status by ~~completing the change form requesting that the license be placed inactive and~~ paying the required fee in ~~accordance with~~ ARM 24.210.401. ~~A salesperson must also forward a release from the salesperson's supervising broker.~~

(2) ~~A licensee whose license is on inactive status with the board has the sole responsibility to keep~~ While inactive, licensees must inform the board ~~informed as to~~ of any change ~~of~~ in the licensee's residency or mailing address ~~during the period of time the real estate licensee remains on inactive status~~.

(3) ~~In order to~~ To avoid lapse, expiration, or termination ~~of the license~~, an ~~inactive licensee must renew the~~ inactive license must be renewed each renewal period.

(4) ~~An inactive licensee does not need to report~~ Licensees do not need to obtain continuing education until converting ~~the license~~ to active status ~~as found in ARM 24.210.625~~.

(5) An inactive licensee may not receive compensation for real estate activity except for:

(a) compensation ~~that was~~ earned while the license was active; or

(b) payments made to an inactive licensee as the seller of a real estate brokerage business.

(6) For an inactive real estate licensee to become active, the licensee must:

(a) request to move to an active status via a board-approved form;

(b) submit proof of current professional liability and errors and omissions insurance;

(c) demonstrate completed continuing education that would have been required if on active status not to exceed 24 credits; and

(d) pay the required fee in accordance with ARM 24.210.401.

Authorizing statute(s): ~~37-1-131,~~ 37-1-319, 37-51-203, MCA

Implementing statute(s): ~~37-1-131,~~ 37-1-319, 37-51-202, ~~37-51-204,~~ MCA

Reasonable Necessity Statement

The board is amending this rule to simplify language and align with current procedures. It is reasonably necessary to add (6) to incorporate provisions from ARM 24.210.625 which is proposed for repeal, so all inactive status provisions will be this single rule.

The board is clarifying in (6) the insurance requirement to shift from inactive to active status. While this is required for all board licensees, it was not previously set forth in rule.

24.210.667 CONTINUING REAL ESTATE EDUCATION

(1) Each active licensee is required to complete a minimum of 12 hours of continuing real estate education every licensing year between November 1 and October 31.

(2) The required hours shall be in real estate continuing education courses that are:

(a) approved by the Association of Real Estate License Law Officials' (ARELLO) Distance Education Certification, or a state real estate licensing regulatory agency or real estate commission; or

(b) endorsed by a national, state, or local Association of REALTORS®, a national, state, or local real estate association, or a national, state, or local landlords' association.

(3) The licensee must attend 90 percent of the first hour and 100 percent of each additional hour of the approved course time to receive credit.

(4) No credit will be granted for carry over hours from a prior licensing year.

(5) The board may grant continuing education credit to board members for actively preparing and participating in board meetings. Credit will be limited to no more than three hours of credit per meeting.

(6) ~~Licensees who have completed continuing education that the licensee believes meets the topic requirements of the board may submit an individual application for course credit to be granted at the board's discretion. The individual course credit application and fee must be filed with the board office within 30 days after course completion to avoid a late fee.~~ No continuing education is required for salesperson licensees who are licensed less than 12 months on their first renewal.

Authorizing statute(s): 37-1-131, 37-1-319, 37-51-203, MCA

Implementing statute(s): 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

Reasonable Necessity Statement

The board is amending (6) to remove licensees' ability to seek special board approval for CE courses to align with standardized department procedures. The rule provides clear guidance to ensure licensees can select qualifying courses. Additionally, the standardized CE audit processes provide licensees with adequate time to cure any audit deficiencies so that extensions and special approvals are no longer necessary.

It is reasonably necessary to amend this rule to allow new salesperson licensees a full licensure period before requiring CE compliance. The board concluded that because salesperson applicants have recently completed 70 hours of prelicensing education, it is not necessary to require additional CE until after 12 months of licensure.

ADOPT

The rules proposed to be adopted are as follows:

NEW RULE 1 (24.210.414) RECORD RETENTION

(1) Licensees must maintain trust account records and real estate related documents for eight years from the date of receipt or the date the transaction was completed, whichever is the latest, including sales contracts, offers, leases and options, agency agreements, and closing statements.

Authorizing statute(s): 37-1-131, MCA

Implementing statute(s): 37-1-131, MCA

Reasonable Necessity Statement

For improved clarity, the board is relocating this provision from ARM 24.210.601(1) to this proposed new rule. The remaining provisions of ARM 24.210.601 regarding salesperson supervision are being simplified and rewritten into NEW RULE 3.

The board is adding offers to the records licensees must maintain to align with ARM 24.210.641(1)(n) and (p), which state that failure to provide all offers to clients until one is accepted or the agreement terminated is unprofessional conduct. This change will also aid in investigating complaints by ensuring these records are available when requested.

NEW RULE 2 (24.210.422) TRUST ACCOUNTS

(1) Brokers who receive any monies on behalf of other persons must deposit the funds in a trust account per 37-1-319, MCA, and maintain the account according to this rule.

(2) Trust accounts must be:

(a) liquid;

(b) readily accessible;

(c) insured in Montana financial institutions;

(d) identified as trust accounts; and

(e) reconciled each month having activity.

(3) Trust funds cannot be:

(a) maintained in sweep accounts; or

(b) invested in certificates of deposit, repurchase agreements, or any other method that places funds at risk.

(4) Brokers:

(a) may separately maintain multiple trust accounts;

(b) are responsible for all funds in and maintenance of their trust accounts;

(c) may delegate authority for trust account maintenance to another licensed broker. Both brokers are responsible for failure to comply with trust account requirements; and

(d) must deposit monies belonging to others into a trust account within three business days, unless otherwise agreed to by the parties.

(5) Trust funds may be maintained in interest-bearing accounts with interest payable to the broker or any other person. Interest payable to a broker must be identified as consideration for services performed and are personal funds unless otherwise designated.

(6) Brokers may deposit and hold in a trust account up to $1,000 of personal funds that include interest accrued to the broker.

(a) Personal funds may be distributed for trust account bank charges, related trust account maintenance expenses, and when due and payable to the broker.

(b) Money due the broker must be withdrawn within ten business days once due and payable.

(7) Brokers must maintain complete and chronological records of all trust account funds received and disbursed including personal funds. Each record must include a running balance and clearly identify for all transactions:

(a) dates;

(b) parties, payees, and sources of funds; and

(c) amounts received, disbursed, and deposited.

(8) Trust account records must be maintained to facilitate auditing.

(9) Trust funds must be retained in the trust account until the transaction is closed or terminated; however, trust funds may be disbursed to the closing agent in anticipation of closing upon written agreement of the buyers and sellers.

(10) At a client's instruction, trust funds otherwise due and payable from a trust account may be retained in the trust account although there is no purchase, lease, or rental agreement in existence, or when the transaction has been terminated.

(11) A broker is not entitled to any earnest money or other monies paid in connection with a real estate transaction as part or all of the commission or fee until the transaction has been closed or terminated. Division of forfeited earnest money between broker and seller must be pursuant to a written agreement.

Authorizing statute(s): 37-1-319, MCA

Implementing statute(s): 37-1-319, MCA

Reasonable Necessity Statement

This proposed new rule updates to more general and reasonable requirements for trust accounts and is replacing ARM 24.210.426 which is proposed for repeal. The board is simplifying and streamlining trust account standards to provide clear guidance regarding current trust account maintenance without overly burdensome regulation. Provisions adequately addressed in statute will not be unnecessarily repeated in this rule.

The board is removing the cautionary provision regarding potential discipline following a negative account balance from a dishonored deposit. Department prosecutors have never seen a case involving this section and do not believe a reasonable cause finding would result from this scenario.

Because commingling of trust account funds is allowed, within the parameters of this rule, the board is removing old language to eliminate potential confusion or conflict.

With the expansion of secure, acceptable methods of electronic fund transfer, the board concluded there is no need to specify or limit fund disbursement methods.

The board determined there is no need to specify the actual documents to keep as trust account records. The board trusts licensees to maintain adequate records for each account and situation.

Brokers are required to keep accurate and adequate records to document all trust account activities. There is no need to require specific ledgers/records.

NEW RULE 3 (24.210.428) ADVERTISING

(1) Any form of advertising by a licensee, either directly or indirectly, must include:

(a) a truthful, accurate, and detailed description of the real property or service advertised;

(b) the licensee's name; and

(c) a statement that the advertisement is made by the licensee or a brokerage company. In an internet advertisement, a link to this information may be used.

(2) In internet advertising, licensee identification:

(a) must be visible in a multimedia advertising message (web-based, executable e-mail, attachments, etc.);

(b) must be shown in banner ads or a link provided to a web page with licensee identification; and

(c) is not necessary in instant or audible messaging if provided via another format prior to providing or offering to provide licensable services.

(3) Internet advertising may include real properties where neither the licensee nor the brokerage company is the listing agent, if the listing agent and the property owners have consented.

(a) The offer of cooperation and consent to internet advertising may arise pursuant to the rules and regulations of a multiple listing service in which the listing agent and the licensee are both participating (provided the multiple listing system allows listing agents to prohibit internet advertising of some or all of their listings by some or all of the participants on that multiple listing system) or by specific written agreement between them.

(b) The owner's consent may be included in the listing agreement and need not identify the specific licensee to whom consent to Internet advertising is given.

(c) Licensees' internet advertising must advise that the property is listed with another licensee or brokerage company and identify the listing agent or brokerage company.

(d) The content of any property data obtained from another listing agent or multiple listing system may not be changed in whole or in part. Such property data may be formatted differently, be condensed, and further advertised if the advertisement contains the following or similar language: "The foregoing material was abstracted from another source and does not contain all of the information available at the source site. Please request further information when considering this property."

Authorizing statute(s): 37-1-131, 37-51-203, MCA

Implementing statute(s): 37-1-131, 37-51-102, 37-51-103, 37-51-301, 37-51-321, MCA

Reasonable Necessity Statement

The board is repealing ARM 24.210.430 and replacing it with this simplified, streamlined rule for clarity and ease of use by the reader. The current rule was adopted in 2001 when internet advertising was relatively new and greater guidance was warranted. The board is updating the

parameters now in this proposed new rule to acknowledge licensees' increased knowledge and experience in this area, and to align with current accepted standards of advertising practice.

It is reasonably necessary to incorporate standards for licensee identification from ARM 24.210.301 to this rule as this is the only rule where the term is used, and a separate definition is not necessary.

The board is striking the provision regarding licensee responsibility for others who reproduce listings as this will be a fact issue addressed in each disciplinary case.

It is unnecessary to specify that internet advertising must be current and updated as this is considered accepted standards of advertising practice, which is already addressed in the unprofessional conduct statute, 37-1-316, MCA. For the same reason, the board is striking the requirement for internet advertising to be set forth in an appropriate and readable format.

It is not necessary to state the licensee's responsibility to ensure that others publish accurate advertising as failure to properly supervise is included in unprofessional conduct.

NEW RULE 4 (24.210.438) LIABILITY INSURANCE DEDUCTIBLE

(1) Per 37-51-325, MCA, a firm may provide professional liability insurance coverage to an affiliated real estate broker or salesperson under a policy with a maximum deductible between $10,000 and $100,000 per claim only upon board approval.

(2) To obtain approval, a real estate firm must submit a letter from a qualified accountant stating that the firm is financially able to pay the difference between the deductible in the firm's professional liability policy and $10,000. A qualified accountant is an actively licensed accountant in good standing with their regulatory authority.

Authorizing statute(s): 37-51-325, MCA

Implementing statute(s): 37-51-325, MCA

Reasonable Necessity Statement

The 2023 Montana Legislature passed House Bill 615, an act revising requirements for professional liability insurance for licensed real estate brokers and salespersons. The board is adopting this new rule to implement the bill by providing the method by which firms obtain

board approval to have professional liability policies with maximum deductibles greater than $10,000.

NEW RULE 5 (24.210.608) SALESPERSON SUPERVISION

(1) Salesperson supervision may be terminated by the supervising broker or salesperson. Upon termination of a supervision:

(a) a salesperson must**:**

(i) notify the board of a new supervising broker relationship or change to inactive license status within ten days of the board receiving notice of the termination; or

(ii) within ten days of being notified by the board the supervising broker has no active broker license or endorsement, transfer to another supervising broker or change to inactive license status;

(b) a supervising broker must within five calendar days of the termination:

(i) notify all principals in the salesperson's listings or transactions that the supervision has terminated, and the listings and pending transactions are now the supervising broker's responsibility;

(ii) if requested, provide the former supervised salesperson with a statement documenting all real estate transactions involving the salesperson while supervised by the supervising broker, within the three years preceding the request; and

(iii) inform the broker's supervised salespeople when the supervising broker no longer has an active broker license or endorsement.

(2) A supervising broker may temporarily transfer supervision of one or more salespersons to other supervising brokers by providing notice of the temporary transfer to the salesperson.

(a) The notice must include:

(i) name of the transferred salesperson(s);

(ii) effective and termination dates of the transfer; and

(iii) acceptance of supervision responsibility by the temporary supervising broker.

(b) The supervising broker must provide a copy of the transfer notice to the board within three business days after the beginning of the temporary transfer or a late fee will be assessed.

(c) A salesperson not wishing to be temporarily supervised must transfer supervision to a new supervising broker or change to inactive license status.

(d) Temporary transfer of a salesperson may not exceed 60 days in any 12-month period unless extended by the board for good cause.

(e) Supervising brokers may end a temporary transfer prior to the termination date by providing notice to the temporary supervising broker and the board.

(f) A temporary supervising broker must supervise for the agreed length of time and may not transfer supervision to anyone except the original supervising broker.

(g) A salesperson must inform the board within ten days of the death or involuntary, unanticipated incapacity of a supervising broker or temporary supervising broker. Supervision of the salesperson may be transferred to a new supervising broker or another temporary supervising broker.

Authorizing statute(s): 37-1-131, 37-51-203, MCA

Implementing statute(s): 37-1-131, 37-51-202, 37-51-301, 37-51-309, 37-51-313, MCA

Reasonable Necessity Statement

The board is repealing ARM 24.210.601 and replacing it with this simplified, streamlined rule to reflect the current processes for salesperson supervision relationships. The record retention provision is relocated to NEW RULE 2 for clarity.

The board is amending the supervising broker's requirements when a salesperson's supervision is terminated in (1)(b). Current rule requires "immediate" actions of the supervisor, but does not explain what that means. The board concluded that setting a five calendar day time limit for these actions is reasonable and will provide improved enforceability of the provisions.

It is reasonable to amend (2)(b) and change the time in which a supervising broker must provide board notice of a temporary transfer of supervision. Instead of three days prior to the transfer, the board will require notice within three days following the transfer to allow for unexpected circumstances that may drive a temporary transfer. Additionally, the board will no longer require the transferring supervisor's signature in the notice. The board concluded that situations may arise where a transferring supervisor is incapacitated or otherwise unable to

sign. The public is adequately protected since the notice must include the acceptance of supervision responsibility by the new supervising broker.

The proposed new rule eliminates all provisions that unnecessarily duplicate statute, including 37-51-102, 37-51-302, and 37-51-309, MCA. The board is striking provisions that reflect out-of-date procedures, such as returning a salesperson's license to the board upon end of a supervisory relationship.

The board is removing the unnecessary provision regarding brokers signing salespersons' applications as this is neither allowed nor required in the current application process. Further, the board does not review or monitor licensees' employment contracts.

The board is striking the provision allowing communication with another agent's clients as this is a contractual term that the board does not regulate.

It is reasonable to remove the caution that salesperson-negotiated listings are the responsibility of a supervising broker as all salesperson activities are the supervisor's responsibility. It is unhelpful and unnecessary to specify a single type of activity.

REPEAL

The rules proposed to be repealed are as follows:

24.210.406 SEVERABILITY

Authorizing statute(s): 37-1-131, 37-51-203, MCA

Implementing statute(s): 37-51-202, 37-51-203, MCA

Reasonable Necessity Statement

It is reasonably necessary to repeal this rule as unnecessary as all rules are considered independently unless otherwise stated in the rule. No other licensing board has this rule currently.

24.210.410 PURPOSE OF BOARD

Authorizing statute(s): 37-1-131, 37-51-203, MCA

Implementing statute(s): 37-1-131, 37-1-316, 37-51-202, MCA

Reasonable Necessity Statement

It is reasonably necessary to repeal this rule as unnecessary as the board's duties and responsibilities are adequately set forth in statute in Title 37, chapters 1 and 51, MCA.

24.210.411 BOARD MEETINGS

Authorizing statute(s): 37-1-131, 37-51-203, MCA

Implementing statute(s): 37-1-131, 37-1-307, 37-51-201, MCA

Reasonable Necessity Statement

The board is repealing this rule to remove language that unnecessarily duplicates statutory provisions as well as processes that are addressed in standardized procedures for all boards.

24.210.412 PUBLIC RECORDS

Authorizing statute(s): 37-51-203, MCA

Implementing statute(s): 37-51-201, MCA

Reasonable Necessity Statement

The board is repealing this rule as it unnecessarily duplicates statutory provisions of 37-51-201, MCA, and public record parameters and procedures applicable to all boards. Additionally, official board meeting minutes are available on the board's website.

24.210.416 APPLICATIONS FOR EXAMINATION AND LICENSE IN GENERAL -- BROKER AND SALESPERSON

Authorizing statute(s): 37-1-131, 37-51-203, MCA

Implementing statute(s): 37-1-131, 37-51-202, 37-51-302, 37-51-303, MCA

Reasonable Necessity Statement

The board is repealing this rule to remove language that unnecessarily duplicates statutory provisions as well as processes that are addressed in standardized department application procedures for all boards. Boards are not in the business of creating and administering legally defensible licensure examinations and it is common practice to contract with a qualified testing agency to do so. Licensure qualifications and application procedures remain unchanged.

24.210.417 MILITARY TRAINING OR EXPERIENCE

Authorizing statute(s): 37-1-145, MCA

Implementing statute(s): 37-1-145, MCA

Reasonable Necessity Statement

The 2023 Montana Legislature enacted Chapter 390, Laws of 2023 (House Bill 583), an act generally revising licensing and certification laws for military members, military spouses, and veterans. The bill became effective July 1, 2024.

It is reasonably necessary to repeal this rule to align with the bill's changes to 37-1-145, MCA. The amended statute provides for all boards and programs to accept relevant military education, training, or service toward license qualifications. Specific board or program rules are no longer needed.

24.210.426 TRUST ACCOUNT REQUIREMENTS

Authorizing statute(s): 37-1-131, 37-1-319, 37-51-203, MCA

Implementing statute(s): 37-1-131, 37-1-319, 37-51-313, 37-51-321, 37-51-324, MCA

Reasonable Necessity Statement

The board is repealing and replacing this rule with NEW RULE 1.

24.210.430 INTERNET ADVERTISING RULES

Authorizing statute(s): 37-1-131, 37-51-203, MCA

Implementing statute(s): 37-1-131, 37-51-102, 37-51-103, 37-51-301, 37-51-321, MCA

Reasonable Necessity Statement

The board is repealing this rule and replacing it with NEW RULE 4 for clarity and ease of use. See REASON for NEW RULE 4.

24.210.601 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

Authorizing statute(s): 37-1-131, 37-51-203, MCA

Implementing statute(s): 37-1-131, 37-51-202, 37-51-301, 37-51-309, 37-51-313, MCA

Reasonable Necessity Statement

The board is repealing this rule and replacing it with NEW RULE 3 to simplify, streamline, and reflect the current processes for salesperson supervision relationships. See REASON for NEW RULE 3.

24.210.625 INACTIVE TO ACTIVE LICENSE STATUS

Authorizing statute(s): 37-1-131, 37-1-319, 37-51-203, MCA

Implementing statute(s): 37-1-306, 37-1-319, 37-51-202, 37-51-204, 37-51-311, MCA

Reasonable Necessity Statement

It is reasonably necessary to repeal this rule and incorporate its relevant provisions into ARM 24.210.624.

24.210.629 RECIPROCITY

Authorizing statute(s): 37-1-131, 37-51-203, MCA

Implementing statute(s): 37-1-304, 37-51-202, 37-51-302, 37-51-306, MCA

Reasonable Necessity Statement

The board is repealing this rule as unnecessary since reciprocity is adequately addressed for all boards in statute at 37-1-304, MCA.

24.210.635 RENEWALS

Authorizing statute(s): 37-1-131, 37-51-203, MCA

Implementing statute(s): 37-1-131, 37-1-141, 37-51-202, MCA

Reasonable Necessity Statement

It is reasonably necessary to repeal this unneeded rule as all renewal provisions are adequately addressed in statute or standardized department renewal procedures, which apply to all licensing boards and programs.

24.210.646 DISCIPLINARY GUIDELINES -- PUBLIC NOTICE

Authorizing statute(s): 37-1-131, 37-1-136, 37-51-203, MCA

Implementing statute(s): 2-4-623, 37-1-136, 37-1-312, 37-51-321, MCA

Reasonable Necessity Statement

The board is repealing this rule to remove language that unnecessarily duplicates the statutory provisions of 37-1-307, 37-1-311, 37-1-312, and 37-51-321, MCA.

24.210.651 REINSTATEMENT

Authorizing statute(s): 37-1-131, 37-1-136, 37-51-203, MCA

Implementing statute(s): 37-1-314, 37-51-202, 37-51-321, MCA

Reasonable Necessity Statement

The board is repealing this rule to remove language that unnecessarily duplicates statutory provisions of 37-1-312 and 37-1-314, MCA. Further, the board is eliminating (1) because final orders must contain specific periods of discipline.

Small Business Impact

The Montana small businesses that will probably be affected by the proposed rule changes are small businesses that employ licensed real estate brokers and salespersons. The board has determined that the proposed rule changes will not create a significant and direct impact on these small businesses.

The Montana small businesses that will probably be affected by the proposed rule adoption of NEW RULE 4 (ARM 24.210.438) that implements House Bill 615 (2023) are larger real estate firms that intend to provide professional liability insurance coverage to employees who are licensed real estate brokers and salespersons. The board has determined that the proposed rule changes will not create a significant and direct impact on these small businesses.

Bill Sponsor Notification

The bill sponsor contact requirements do apply and have been fulfilled. The primary bill sponsor was contacted on August 11, 2024, by electronic mail.

Interested Persons

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner

Approval

Sharon Virgin, Chair, Board of Realty Regulation

MONTANA
ADMINISTRATIVE
REGISTER

BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-167.1

Summary

Implementation of Senate Bill (SB) 166 (2025) and adoption of a rolling 30-month period for examination credits

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Hearing Date and Time

Tuesday, July 22, 2025, at 11:00 a.m.

Virtual Hearing Information

A public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

Join Zoom Meeting

https://mt-gov.zoom.us/j/85950036463

Meeting ID: 859 5003 6463; Password: 719644

Dial by Telephone: +1 646 558 8656

Meeting ID: 859 5003 6463; Password: 719644

Comments

Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received by Friday, July 25, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Tuesday, July 15, 2025, at 5:00 p.m.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

General Reasonable Necessity Statement

The 2025 Legislature passed SB 166, striking a specific credit hour education requirement from statute and requiring the board to establish education and experience requirements for applicants for a CPA license. The board is amending ARM 24.201.502 and 24.201.503 to allow three separate education levels to become licensed, and establishing experience requirements for each of those levels of education. Additionally, the board is amending ARM 24.201.516 to reflect a national trend to allow candidates sitting for the examination to have a rolling 30-month period to pass the four sections, rather than 18 months. The board determined, based on the amount of requests to extend credit for test scores, that 30 months would better allow candidates to prepare for the examinations.

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.201.502 ACCOUNTING AND AUDITING EXPERIENCE REQUIREMENTS

(1) To be issued a license, an applicant must provide evidence of acceptable accounting and/or auditing experience.

(2) Acceptable experience is performing accounting and/or auditing functions ordinarily required in the practice of public accounting, provided this experience:

(a) is attested to by:

(i) a U.S. CPA whose license was active and current at the time of attestation; or

(ii) a fully licensed individual from a professional accounting body with a MRA with NASBA and the AICPA who supervises or directs the applicant; or

(b) is evaluated by the board for military experience based on information provided by the applicant's commanding officer; and

(c) takes place in the three years prior to the date of the application; and

(d) includes ~~at least 12 calendar months (2000 hours actual work experience) of~~ private, governmental, academic, or public accounting work acceptable to the board~~.~~ ; and

(e) includes at least 12 calendar months and 2000 hours of actual work experience for each year required for licensure under ARM 24.201.503.

(3) If the attester is not the applicant's supervisor, the attester must:

(a) be familiar with the applicant's work and provide a narrative of the step taken to determine the work experience meets professional standards;

(b) provide an explanation of how the attested hours were verified; and

(c) confirm the hours and work product with the applicant's supervisor.

Authorizing statute(s): 37-1-131, 37-50-203, MCA

Implementing statute(s): 37-1-131, 37-50-203, 37-50-302, 37-50-325, MCA

24.201.503 APPLICANT FOR INITIAL LICENSE

(1) All applicants for a license must:

(a) meet the requirements of 37-50-302, MCA;

(b) submit a complete application and pay all fees;

(c) meet ~~the~~ one of the following education and experience requirements ~~of 37-50-305, MCA, and~~:

(i) ~~meet the education requirements of ARM 24.201.501; or~~ a post-baccalaureate degree with a concentration in accounting as required by ARM 24.201.501 from an accredited institution and one year of accounting experience meeting the requirements of ARM 24.201.502;

(ii) ~~for applicants with exam dates prior to November 1997, meet the following education requirements:~~ a baccalaureate degree with a concentration in accounting as required by ARM 24.201.501 plus an additional 30 semester hours and one year of accounting experience meeting the requirements of ARM 24.201.502; or

~~(A) An applicant who has examination scores for an examination administered prior to or in May 1996 must have graduated from a college or university accredited at the time of the applicant's graduation with:~~

~~(I) a baccalaureate degree, with a concentration in accounting, including 24 semester hours (36 quarter hours) of accounting, auditing, and tax courses, and 18 semester hours (27 quarter hours) in other areas of business such as business law, management, marketing, economics, and finance. The other areas of business shall include no more than six semester hours (nine quarter hours) in one area; or~~

~~(II) a baccalaureate degree, with a concentration other than accounting and five years of employment experience at a public accounting firm, or in industry or government in a responsible financial position; or~~

~~(III) a baccalaureate degree, with a concentration other than accounting and related courses in other areas of business administration which the board considers to be an equivalent education, including 12 semester hours (18 quarter hours) of accounting, auditing, and tax courses, and nine semester hours (14 quarter hours) in other areas of business such as business law, management, marketing, economics, and finance. The nine semester hours (14 quarter hours) shall include no more than three semester hours (five quarter hours) in one area.~~

~~(B) An applicant who has examination scores for an examination administered in November 1996 or May 1997 must have~~

~~graduated from a college or university then accredited to offer a baccalaureate degree subsequent to passing the exam, and completed 24 semester hours (36 quarter hours) of accounting, auditing, and tax courses, and 18 semester hours (27 quarter hours) in other areas of business such as business law, management, marketing, economics, and finance. The 18 semester hours (27 quarter hours) shall include no more than six semester hours (nine quarter hours) in one area.~~

(iii) a baccalaureate degree with a concentration in accounting as required by ARM 24.201.501 and two years of accounting experience meeting the requirements of ARM 24.201.502;

(d) pass the Uniform Certified Public Accountant exam in accordance with ARM 24.201.516 or 24.201.517;

(e) pass the comprehensive professional ethics for CPAs course developed by the AICPA; and

~~(f) meet the experience requirement of ARM 24.201.502; and~~

~~(g)~~(f) provide a license verification if currently holding or have ever held a professional license in another state.

(2) Applicants for initial license who did not sit for the exam as a Montana candidate must submit official transcripts for all domestic education to CPAES for evaluation in reference to Montana education requirements.

(3) Incomplete applications for licensure that are older than 12 months will be considered invalid and void. The applicant will be required to reapply and pay another fee.

Authorizing statute(s): 37-1-131, 37-50-201, 37-50-203, MCA

Implementing statute(s): 37-1-131, 37-50-203, 37-50-302, 37-50-305, MCA

24.201.516 GRANTING OF EXAMINATION CREDIT

(1) An examination candidate may take test sections individually and in any order. Any test section passed is valid for ~~18~~ 30 months from the ~~actual~~ date the ~~examination candidate took the test section~~ passing score is released by NASBA to the candidate or the board, as the case may be.

(2) ~~All test sections must be passed within an 18-month period, which begins on the date the first test section that was passed was taken~~ Candidates shall pass all required test sections within a rolling 30 month period. The rolling 30-month period begins on the date the first passing score(s) are released by NASBA to the candidate or the board, as the case may be. The rolling 30-month period concludes on the date the candidate sits for the final test section passed, regardless of when the score is released by NASBA for the final test section.

(a) ~~An examination candidate cannot retake any failed test section in any one three-month testing period.~~

(b) ~~If the board determines that the examination system changes necessary to eliminate the three-month testing period limitations have been implemented, (a) will no longer be effective and a candidate can retake a test section once their scores for any previous attempt of that same test section have been released.~~

(3) In the event all test sections are not passed in ~~an 18~~ a 30-month period, credit for any test section passed outside the ~~18~~ 30-month period will expire and that test section must be retaken.

(4) The ~~18~~ 30-month period in which to pass all required sections of the examination may be extended if a hardship exception is approved by the board or its designee.

Authorizing statute(s): 37-50-204, MCA

Implementing statute(s): 37-50-204, 37-50-302, MCA

Small Business Impact

The board has determined that the class of persons or small businesses affected are primarily those seeking to become licensed by this board, or those businesses seeking to hire new accountants. The potential effects include the possibility that there will be more prepared candidates more likely to pass the examination, leading to more potential employees and more potential licensees in Montana. However, none of the proposed changes affect the qualifications for licensure. Applicants must still have appropriate education, experience, and passage of the examination to become licensed.

Bill Sponsor Notification

The bill sponsor contact requirements apply and have been fulfilled. The primary bill sponsor was contacted on May 7, 2025, by electronic mail.

Interested Persons

The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

Rule Reviewer

Jennifer Stallkamp

Approval

Sarah Swanson, Commissioner

Approval

Mike Johns, CPA, Presiding Officer, Board of Public Accountants

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-53.1

Summary

Amendment of ARM 37.85.206 and adoption of NEW RULES 1 through 3 pertaining to Pediatric Complex Care Assistant Services

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Hearing Date and Time

Friday, July 18, 2025, at 9:00 a.m.

Virtual Hearing Information

Join Zoom Meeting

https://mt-gov.zoom.us/j/82258062357?pwd=Gb1lFeyzMbatbFHxCIu7lHPaEbw8kp.1

Meeting ID: 822 5806 2357 and Password: 266550

Dial by Telephone +1 646 558 8656

Meeting ID: 822 5806 2357 and Password: 266550

Find your local number: https://mt-gov.zoom.us/u/kcLIY806R6

Comments

Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may be submitted using the contact information below. Comments must be received by Friday, July 25, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, July 3, 2025, at 5:00 p.m.

Contact

Bailey Yuhas
(406) 329-7913
hhsadminrules@mt.gov
Fax: (406) 444-9744

Rulemaking Actions

AMEND

The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

37.85.206 SERVICES PROVIDED

(1) Except as otherwise provided in this rule, the following medical or remedial care and services are available to all persons who are eligible for Medicaid benefits under this chapter, including deceased persons, categorically related, who would have been eligible had death not prevented them from applying.

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) non-hospital laboratory and x-ray services;

(d) nursing facility services;

(e) early and periodic screening, diagnosis, and treatment services;

(f) physician's services;

(g) podiatry services;

(h) outpatient physical therapy services;

(i) speech therapy, audiology, and hearing aid services;

(j) outpatient occupational therapy services;

(k) home health care services;

(l) personal care services in a member's home;

(m) home dialysis services;

(n) private duty nursing services;

(o) clinic services;

(p) dental services;

(q) outpatient drugs;

(r) durable medical equipment, prosthetic devices, and medical supplies;

(s) eyeglasses and optometric services;

(t) transportation and per diem;

(u) ambulance services;

(v) specialized nonemergency transportation;

(w) family planning services;

(x) home and community services;

(y) mid-level practitioner services;

(z) hospice services;

(aa) licensed psychologist services;

(bb) licensed clinical social worker services;

(cc) licensed professional counselor services;

(dd) inpatient psychiatric services;

(ee) mental health center services;

(ff) case management services;

(gg) institutions for mental diseases for persons ~~age~~aged 65 and over;

(hh) payment of premiums, co-insurance, deductibles, and other cost sharing obligations under an individual or group health plan in accordance with the provisions of ARM 37.82.424;

(ii) diabetes and cardiovascular disease prevention services;

(jj) habilitative services; ~~and~~

(kk) rehabilitative services~~.~~; and

(ll) pediatric complex care assistant services.

(2) Only those medical or remedial care and services also covered by Medicare are available to a person who is eligible for Medicaid benefits as a qualified Medicare beneficiary under ARM 37.83.201 and 37.83.202.

(3) State plan Medicaid benefits are available for members who are Medicaid-covered through the Waiver for Additional Services and Populations (WASP) Medicaid 1115 Waiver as approved by the Centers for Medicare and Medicaid Services (CMS).

(a) A person may receive coverage through the WASP Medicaid 1115 Waiver if the person is 18 or older, has severe disabling mental illnesses (SDMI), would qualify for or be enrolled in the state-financed mental health services plan (MHSP) or the WASP Medicaid 1115 Waiver but is otherwise ineligible for Medicaid benefits, and either:

(i) the person's income is 0 to 138% of the federal poverty level and the person is eligible for or is enrolled in Medicare; or

(ii) the person's income is 139 to 150% of the federal poverty level whether Medicare- eligible or not.

(b) A person determined categorically eligible for Medicaid as aged, blind, or disabled (ABD) in accordance with ARM 37.82.901 through 37.82.903 is not subject to the annual $1,125 dental treatment limit. The monies expended for treatment costs exceeding the limit are covered through the WASP Medicaid 1115 Waiver.

Authorizing statute(s): 53-2-201, 53-6-113, MCA

Implementing statute(s): 53-2-201, 53-6-101, 53-6-103, 53-6-111, 53-6-113, 53-6-131, 53-6-141, MCA

ADOPT

The rules proposed to be adopted are as follows:

NEW RULE 1 PEDIATRIC COMPLEX CARE ASSISTANT SERVICES, REQUIREMENTS

(1) To qualify for Pediatric Complex Care Assistant (PCCA) services, an individual must be a Medicaid member under 21 years of age.

(2) PCCA services must be provided in accordance with the requirements of 37-2-603, MCA. The services are limited to those provided for under the statute and in ARM 24.160.501.

(3) PCCA services must not replace Private Duty Nursing Services or supplant other services the member is receiving, but a member may receive PCCA services, Personal Care Assistant services, and/or Private Duty Nursing services under a person-centered care plan.

(4) PCCA services may only be provided by licensed pediatric complex care assistants employed by a Medicaid-enrolled PCCA provider agency and selected by the member or their authorized representative.

Authorizing statute(s): 53-6-101, 53-6-113, MCA

Implementing statute(s): 53-6-101, 53-6-113, MCA

NEW RULE 2 PEDIATRIC COMPLEX CARE ASSISTANT SERVICES, PROVIDER REQUIREMENTS AND ENROLLMENT

(1) Pediatric Complex Care Assistant (PCCA) service provider agencies must be enrolled Medicaid providers.

(2) PCCA service provider agencies must be a business entity formed or registered to do business under Montana law.

(3) PCCA services must be prior-authorized by the department or the department's designee.

(4) PCCA service provider agencies must provide documentation to the department verifying the PCCA's certification training and current licensure.

(5) PCCA service provider agencies must use an electronic visit verification (EVV) system to electronically document the delivery of services and submit claims.

(a) In accordance with 42 U.S.C. 1396b(l), the EVV system must capture the following data elements:

(i) the type of service performed;

(ii) the member receiving the service;

(iii) the date of the service;

(iv) the location of the service delivery;

(v) the individual providing the service; and

(vi) the time the service begins and ends.

(b) The use of EVV is required for all members utilizing PCCA services, including members for whom services are provided by a live-in caregiver.

Authorizing statute(s): 53-6-101, 53-6-113, MCA

Implementing statute(s): 53-6-101, 53-6-113, MCA

NEW RULE 3 PEDIATRIC COMPLEX CARE ASSISTANT SERVICES, REIMBURSEMENT

(1) Pediatric Complex Care Assistant (PCCA) services may not exceed 24 hours, or 96 units, in a single day for an individual.

(2) The rate for PCCA services is the lesser of:

(a) $10.78 per 15-minute unit of service, which equates to $43.12 per hour of service provided; or

(b) the provider's usual and customary charge.

Authorizing statute(s): 53-6-101, 53-6-113, MCA

Implementing statute(s):53-6-101, 53-6-113, MCA

General Reasonable Necessity Statement

The Department of Public Health and Human Services (department) is proposing to adopt NEW RULES 1 through 3 and to amend ARM 37.85.206 to implement House Bill (HB) 449 that passed and was enacted into law during Montana's 68th Legislative Session. HB 449 establishes Pediatric Complex Care Assistant (PCCA) services and authorizes the services to be provided through the Montana Medicaid program to members under the age of 21 who have complex medical needs. These rules are necessary to establish PCCA service requirements and the rate for reimbursement in accordance with HB 449 and Medicaid State Plan Amendment #24-0016 that was approved by the Centers for Medicare & Medicaid Services (CMS) on September 9, 2024.

PCCA services are designed to:

1. improve access to specialized care for eligible Medicaid members, particularly in rural and underserved areas of Montana;

2. provide families with the resources to deliver medically necessary services at home to eligible members; and

3. provide clarity regarding PCCA service requirements, provider enrollment standards, and rate reimbursement.

NEW RULE 1

The department is proposing this rule to set forth the eligibility criteria for PCCA services and the scope of allowable services in accordance with 37-2-603, MCA, ARM 24.160.501, and Montana's approved Medicaid state plan.

NEW RULE 2

This rule establishes requirements for PCCA service provider agencies. As part of this rule, the department is proposing to require the use of an Electronic Visit Verification (EVV) system for all PCCA caregivers. Federal law mandates that states require EVV use for Medicaid-funded personal care services and home health care services for in-home visits by a provider. 42 U.S.C. § 1396b(l). EVV is a technology that automates the gathering of service information by capturing time, attendance, and care plan information entered by a home care worker at the point of care. Under current CMS guidance, federal EVV requirements do not apply if the individual receiving services lives with the caregiver providing the service because CMS does not consider such services to constitute an "in-home visit." However, CMS encourages states to provide appropriate oversight to services provided by live-in caregivers and states may choose to implement EVV to such services, particularly when using discrete units of reimbursement.[1] Under New Rule 3, PCCA services are to be paid in discrete units of reimbursement of 15-minute increments.

To control fraud, waste, and abuse, the department is proposing for EVV requirements to apply to services provided to all members utilizing PCCA services, including members for whom services are provided by a live-in caregiver. EVV combats fraud, waste, and abuse in several different ways. First, EVV provides for accurate timekeeping of services by automatically recording the exact time a caregiver clocks in and out, which prevents errors in time entry and billing for more time than is actually worked in providing services. Second, EVV provides for location verification at the time of services, to confirm a caregiver's location at the time of reported services. Third, EVV facilitates data analysis to proactively allow provider agencies and the department to identify patterns of potential abuse and other concerns, such as excessively long shifts or inconsistent care delivery. Fourth, EVV reduces administrative burden for

[1] CMS Informational Bulletin, FAQ #1 (Aug. 9, 2019), https://www.medicaid.gov/federal-policy-guidance/downloads/cib080819-2.pdf

provider agencies by allowing for automatic timekeeping, reducing the need for manual paperwork and the potential for errors in billing.

NEW RULE 3

The department is proposing this rule to establish the Medicaid reimbursement rate for PCCA services. The proposed rate of $10.78 per 15-minute increment of service is based primarily on direction provided in HB 449 for the PCCA rate to be comparable to the reimbursement rate for home health services. The current Medicaid rate for home health services is $42.49 per visit. The department added a 1.5% inflationary factor to this rate to reach an hourly amount of $43.13. This amount of $42.13 was divided into four and rounded to the nearest cent to set the PCCA reimbursement rate at $10.78 per 15-minute unit of service.

ARM 37.85.206

The department is proposing to amend this rule to add PCCA services to the list of enumerated Medicaid services available to eligible members. The department is also proposing to amend this rule to correct a grammatical error in (1)(gg).

Fiscal Impact

Based upon past claims data for Medicaid Private Duty Nursing (PDN) services, the department estimates that 20 individuals will use PCCA services, with an average utilization rate of 30 hours per week per individual (1,560 hours annually). The rate for PCCA services equates to $43.12 per hour. The total estimated fiscal impact is $1,345,344 per year (20 members x 1560 hours x $43.12 = $1,345,344 per year).

There is potential for some of these costs to be offset as the department anticipates the availability of PCCA services will result in a reduction in the utilization of PDN services. However, until PCCA services are implemented, the extent of the reduction in utilization of PDN services is unknown and the anticipated cost savings cannot be quantified.

Funds impacted are the federal Medicaid fund source (03583) and general fund source (01100).

Interested Persons

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be emailed, mailed or otherwise delivered to the contact person above.

Bill Sponsor Notification

The bill sponsor contact requirements apply and have been fulfilled. The primary bill sponsor of HB 449 from the 2023 Legislative Session was notified by mail and electronic mail on April 14, 2025.

Small Business Impact

The class of small businesses probably affected by the proposed rules are those seeking to serve as a provider agency for Pediatric Complex Care Assistant (PCCA) services. The probable significant and direct effects of these proposed rules on these small businesses is that the rules create the framework and establish a process for the small businesses to enroll and serve as PCCA provider agencies.

Medicaid Performance-Based Statement

Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

Rule Reviewer

Robert Lishman

Approval

Charles T. Brereton, Director

Department of Public Health and Human Services

MONTANA
ADMINISTRATIVE
REGISTER

TEACHERS' RETIREMENT SYSTEM

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2025-107.1

Summary

These rule amendments and repeals are proposed to bring ARM Title 2, chapter 44 into compliance with state and federal law, to create clarity, and to remove duplicative language.

No Hearing Scheduled

If the agency receives requests for a public hearing on the proposed rulemaking from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed rulemaking; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

The estimated number of persons directly affected by the proposed rulemaking is 0. These changes are generally clerical in nature and any amendments or repeals are precipitated by Montana statutes or federal law. The changes do not result from policy considerations or changes implemented by the TRS board.

Comments

Comments may be submitted using the TRS email account, TrsOutreach@mt.gov. Comments must be received by Friday, July 25, 2025, at 5:00 p.m.

Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Friday, July 18, 2025, at 5:00 p.m.

Contact

James Malizia
406.444.9388
TrsOutreach@mt.gov

General Reasonable Necessity Statement

These rule amendments and repeals are proposed in order to bring ARM Title 2, chapter 44 into compliance with statute, to create clarity, and to remove duplicative language.

Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

2.44.301A DEFINITIONS

For the purpose of this chapter, the following definitions apply:

(1) "Alternate payee" means an alternate payee as defined in 19-20-305, MCA.

(2) "Board" or "retirement board" means the Teachers' Retirement Board as provided for in 2-15-1010, MCA.

~~(3) "Contingent beneficiary" means a beneficiary designated to receive payments if all primary beneficiaries are deceased. Contingent beneficiaries will be awarded benefits on a share-and-share-alike basis, unless specified otherwise on the member's designation form.~~

(4) "Direct rollover" means a distribution made by the Teachers' Retirement System directly to an eligible retirement plan specified by the participant.

(5) "Eligible retirement plan" means any of the following that accepts a participant's eligible rollover distribution:

(a) an individual retirement account described in Internal Revenue Code (IRC) section 408(a);

(b) an individual retirement annuity described in IRC section 408(b);

(c) an annuity plan described in IRC section 403(a);

(d) a qualified trust described in section 401(a);

(e) effective January 1, 2002, an annuity contract described in IRC section 403(b);

(f) effective January 1, 2002, a plan eligible under IRC section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this chapter; or

(g) effective January 1, 2008, a Roth Individual Retirement Account (IRA) described in IRC section 408A.

~~(6) "Enrolled actuary" means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under Subtitle C of the Title III of the Employee Retirement Income Security Act of 1974.~~

~~(7)~~(6) "Family law order (FLO)" means a family law order as defined in 19-20-305, MCA.

~~(8)~~(7) "Nonqualified service credit" means permissive service credit other than for services as defined in IRC section 415(n)(3)(C).

~~(9) "Paraprofessional" means someone who provides instructional support which includes:~~

~~(a) one-on-one tutoring;~~

~~(b) classroom management, such as organizing instructional materials;~~

~~(c) instructional assistance in a computer laboratory;~~

~~(d) conducting parental involvement activities;~~

~~(e) a translator; or~~

~~(f) instructional support services under the direct supervision of a highly qualified teacher.~~

~~(10)~~(8) "Participant" means a person who ~~has or~~ is eligible to receive a distribution from the Teachers' Retirement System and to make a direct rollover of the distribution to another eligible plan, including:

(a) a member or ~~former~~ retired member;

(b) a member's or ~~former~~ retired member's surviving spouse;

(c) a member's or ~~former~~ retired member's spouse or former spouse who is the alternate payee under a FLO that qualifies as a domestic relations order as defined in IRC section 414(p); and

(d) effective January 1, 2007, a nonspouse who is a designated beneficiary as defined in IRC section 401(a)(9)(E).

~~(11) "Primary beneficiary" means a beneficiary or beneficiaries designated to receive payments upon the death of an active, inactive or retired member, or alternate payee. Primary beneficiaries will be awarded benefits on a share-and-share-alike basis, unless specified otherwise on the member's designation form.~~

~~(12)~~(3) ~~"Service credits" or "creditable service" means the number of years credited to a member's account for which contributions have been received as required by statute or rule.~~ "Creditable service" is that service defined by 19-20-401, MCA.

~~(13)~~(9) "School term or school year" means the fiscal year July 1 through June 30.

(10) "TRS" or "retirement system" means the Teachers' Retirement System of the state of Montana as provided for in 19-20-102, MCA.

Authorizing statute(s): ~~19-4-201,~~ 19-20-201, MCA

Implementing statute(s): 19-20-101, 19-20-106, 19-20-204, 19-20-302, 19-20-305, MCA

Reasonable Necessity Statement

In (3), the term is deleted because it is defined in 19-20-101, MCA, and is, therefore, duplicative in administrative rule.

In (6), the term is deleted because an "enrolled actuary" is no longer applicable and the requirements for actuaries used by TRS is set forth in 19-20-203(1)(c), MCA.

In (8), the listed services that earn "nonqualified service credit" in accordance with IRC § 415(n)(3)(C) are listed in 19-20-101(14) and 19-20-302(4), MCA. Accordingly, those services should be deleted from administrative rule. Since "nonqualified service credit" is a controlling federal term and it is not defined in statute, that term should remain for clarity.

In (10), the language is amended for clarity.

In (11), the term is duplicative of that found in 19-20-101(24), MCA.

In (12), the term is amended to cross reference with that provided in Montana statute. The reference to statute remains in this administrative rule for clarity.

In (14), the term is amended to cross reference with that provided in Montana statute. The reference to statute remains in this administrative rule for clarity.

The authorizing and implementing statutes are amended to reflect the current controlling law.

2.44.305 ~~OPTIONAL RETIREMENT PROGRAM FOR CERTAIN MEMBERS OF THE MONTANA UNIVERSITY SYSTEM~~ REPORTING OF MONTANA UNIVERSITY SYSTEM RETIREMENT PROGRAM (MUS-RP) PARTICIPANTS

(1) Each unit of the university system shall provide ~~the Teachers' Retirement Board~~ TRS with a monthly report of all members participating in the ~~optional retirement program~~ MUS-RP and remit the employer contributions due. The report shall contain the following and be in alphabetical order:

(a) last name, first name;

(b) social security number;

(c) salary earned.

Authorizing statute(s): ~~19-4-201,~~ 19-20-201, MCA

Implementing statute(s): ~~19-4-302(1),~~ 19-20-302, 19-20-621, MCA

Reasonable Necessity Statement

The title of the administrative rule and text are amended to create consistency with the terminology used in 19-20-621, MCA.

The authorizing and implementing statutes are amended to reflect the current controlling law.

2.44.402 CREDIT FOR MILITARY SERVICE

(1) ~~For those eligible, military credit will be given for active service in World War II from October 1940 through June 1947, and for service in the Korean Conflict from June,~~

~~1950 through January, 1955, and~~ Creditable service may be granted for any period of active service allowed under 19-20-404, MCA.

(2) Any member having purchased military service that is subsequently granted at no cost shall receive a refund of their accumulated contributions attributable to the service purchase.

(3) Verification of military service should be submitted on form DD 214~~,~~ or, if not applicable, a form which certifies the date of entry into active military duty and the date of separation. A form should be provided for each term of active duty.

(4) The period of time used for crediting military service shall be the fiscal year of July 1 through June 30. Military service shall be credited on the basis of 12 full months of active duty equals one year of creditable service or a proportion thereof, based on the number of full months to 12. A partial month will be credited on the basis of the number of active duty days divided by 360.

Authorizing statute(s): ~~19-4-201,~~ 19-20-201, MCA

Implementing statute(s): ~~19-4-404,~~ 19-20-404, MCA

Reasonable Necessity Statement

The rule is amended for clarity and because it partially duplicates the substance of 19-20-404(1), MCA.

The authorizing and implementing statutes are amended to reflect the current controlling law.

2.44.412 NATIONAL GUARD, RESERVISTS, AND VETERANS CALLED TO ACTIVE DUTY

(1) Members of the TRS called to active duty for a period not to exceed five years and reemployed in accordance with the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 shall be considered continuously employed during their military leave when determining vested interest and eligibility for retirement benefits.

(2) Reemployed National Guard, reservists, and veterans may elect to purchase creditable service for their military leave to be used in the calculation of retirement benefits. The cost to purchase this service shall be equal to the employee contributions that would have been made had they not been called to active duty. ~~Interest accruing on the balance due to purchase active duty service will not~~

~~be levied during the five years following the date of reemployment. If payment is not completed within five years following reemployment, interest will be assessed as provided under ARM 2.44.405.~~

(3) To qualify for service under this rule, the member called to uniformed service must remain an inactive member of the retirement system during the period of service in the uniformed services by leaving his or her accumulated contributions on deposit.

(4) A member who is making additional contributions under a service purchase contract at the time he or she is called to service in the uniformed services may suspend payments under the contract if they return to employment as required by the Act.

Authorizing statute(s): ~~19-4-201,~~ 19-20-201, MCA

Implementing statute(s): ~~19-4-801, 19-4-901, 19-4-1001,~~ 19-20-212, 19-20-415, 19-20-801, 19-20-901, 19-20-1001, MCA

Reasonable Necessity Statement

This language is deleted because interest cannot be charged to the member for purchase within the federally mandated repurchase period. 20 CFR 1002.263.

The authorizing and implementing statutes are amended to reflect the current controlling law.

2.44.507 PAYMENT OF ~~CHILDREN'S~~ MINOR CHILD BENEFITS

(1) ~~The~~ A minor child's benefit will be last payable the month in which ~~he~~ the child attains age 18.

(2) A birth certificate or some evidence of birth date is required for each child eligible to receive the minor child benefit.

Authorizing statute(s): ~~19-4-201,~~ 19-20-201, MCA

Implementing statute(s): ~~19-4-1002,~~ 19-20-1002, MCA

Reasonable Necessity Statement

The title of the administrative rule and the text are amended for clarity.

The authorizing and implementing statutes are amended to reflect the current controlling law.

2.44.518 LIMIT ON EARNED COMPENSATION - 10% CAP

(1) Except as described in this rule, ~~T~~the earned compensation for each year used in calculating a member's average final compensation may not exceed either the member's actual earned compensation or earnings adjusted by this rule for the preceding year by more than 10%. ~~except for~~ Earned compensation reported for a member with an effective date of retirement on or before July 1, 2011, is exempt from the 10% cap for increases that result from:

(a) collective bargaining agreements;

(b) a change or adjustments in a salary schedule covering a certifiable group of employees not covered under a collective bargaining agreement. The employer must certify the group of employees affected by the change or adjustment in the salary schedule, the increase received by each employee, and the methodology for determining the increases;

(c) compensation received for summer employment, provided summer compensation does not exceed one-ninth of the academic year contract for each full month or prorated for each portion of a month employed during the summer;

(d) change of employer;

(e) re-employment for a period of not less than one year following a break in service;

(f) a promotion to an existing permanent position with the same employer. The assignment of temporary duties or a new job added to existing duties, an acting or interim appointment, a change in classification or title, or an increase in compensation received would not qualify as a promotion; or

(g) the combination of salary from multiple employers that when reviewed separately does not exceed 10%.

(2) The member must provide adequate documentation to permit the board to make an informed decision concerning exceptions to the 10% limitation. Adequate documentation includes but is not limited to the following:

(a) employment contracts;

(b) official minutes of board meetings;

(c) collective bargaining agreements; or

(d) salary schedules.

(3) The assignment of additional duties of a one time or temporary nature shall not be exempt from the 10% limitation.

(4) Average final compensation is equal to total compensation less excess earnings not qualifying for an exemption.

Authorizing statute(s): ~~19-4-201,~~ 19-20-201, MCA

Implementing statute(s): ~~19-4-101,~~ 19-20-101, 19-20-715, 19-20-805, MCA

Reasonable Necessity Statement

The text of the rule and the authorizing and implementing statutes are amended to reflect the current controlling law.

2.44.522 FAMILY LAW ORDER -- CONTENTS AND DURATION

(1) ~~The board~~ TRS will make available to the public model forms approved for ~~inclusion in a proposed~~ use as a Family Law Order (FLO).

(2) ~~If benefits are currently payable to the participant(s), the FLO may specify a future effective date; however, a~~ A FLO may not provide for payments to an alternate payee prior to the date on which the ~~participant~~ member first becomes eligible for payment from ~~the~~ TRS.

(3) If benefits are payable pursuant to a FLO that meets the requirements of a domestic relations order as defined in IRC section 414(p), the applicable provisions of IRC section 414(p) will be followed by ~~the Teachers' Retirement System~~ TRS in giving effect to the FLO.

(4) Two basic types of payment distributions are allowed to alternate payees: "fixed amount" and "actuarially equivalent ~~benefit~~ amount."

(a) A ~~"~~fixed amount~~"~~ distribution may be expressed as a percentage of the benefit otherwise payable by the retirement system or as a specific dollar amount may not exceed the amount of the periodic or lump-sum benefit payable by the retirement system at any time. ~~must designate a specific total~~

~~dollar amount to be paid to the alternate payee over a specified period of time, or a specified monthly amount payable for the life of the participant, neither of which can be greater than the total monthly benefit payable to the participant.~~ A fixed amount distribution expressed as a percentage of the benefit will include a share of any guaranteed annual benefit adjustment applied to the benefit. The duration of the fixed amount distribution may be for a specific period of time; for the life of the member; or for as long as a benefit is payable on the member's account. In all cases, a fixed amount distribution will terminate, at the latest, when a benefit is no longer payable to the member or to a joint annuitant or beneficiary of the member, even if the dollar amount specified in the FLO has not been paid in full or payments have not been made for the period of time specified in the FLO.

(b) An ~~"~~actuarially equivalent ~~benefit"~~ amount distribution must be expressed as a percentage of the benefit otherwise payable to the member, and is actuarially adjusted to be paid ~~is payable~~ for the life of the alternate payee. An actuarially equivalent amount FLO may be entered only on the account of an active or inactive member.

Authorizing statute(s): 19-20-201, MCA

Implementing statute(s): 19-20-106, 19-20-305, MCA

Reasonable Necessity Statement

The amendments are necessary for clarity.

By statute, FLOs need to be completed on TRS-designated forms. Throughout ARM 2.44.522, the term "board" has been replaced with "TRS" where the TRS board has delegated authority to the agency for the administration of FLOs and the associated forms under 19-20-305(13), MCA.

The terms "participant," "member," and "alternate payee" have been edited to address confusion with IRS terminology and TRS code. The term "participant" was changed to "member" to show that FLOs can only be entered upon a TRS member. Under 19-20-305(2)(d), MCA, "participant" means a member or retiree of the retirement system. However, this conflicts with the use of the term in the governing federal provision for governmental plan under IRC section 414.

Under 19-20-305 and 19-20-702, MCA, "actuarial equivalent" retirement benefit calculations of "a joint survivor annuity" can only be granted to either to a "joint annuitant" or "alternate

payee" for retirement system members who have not yet retired. Accordingly, the language has been amended.

2.44.523 FAMILY LAW ORDERS -- APPROVAL AND IMPLEMENTATION

(1) A participant or alternate payee must submit a certified copy of ~~a~~ the final court ~~judgment, decree, or~~ order, ~~containing a proposed~~ the FLO, to ~~the board~~ TRS for approval. ~~The board has delegated authority for approval of a proposed FLO to the executive director of TRS.~~

(2) ~~The effective date for purposes of allocating benefits and payments in progress is the first day of the month following receipt of a certified copy of the FLO.~~ A FLO is effective upon final approval by TRS and the terms of the FLO will be given effect:

(a) if benefits are not currently payable on the member's account, at the time benefits become payable on the member's account; or

(b) if benefits are currently payable on the member's account, on the first of the month following submission to and approval of the final FLO by TRS.

(3) A FLO may not require and TRS will not apply a FLO to a monthly or lump-sum distribution processed for payment by TRS prior to the effective date of the FLO. A distribution has been processed for payment by TRS when the payment has been loaded by TRS to the state's automated accounts payable system to effectuate electronic funds transfer or issuance and mailing of a check in satisfaction of the distribution obligation, notwithstanding that electronic funds transfer or printing and mailing of the check may not yet have occurred. ~~For purposes of allocating a lump sum payment, a certified copy of the FLO must be received before the payment is mailed or otherwise conveyed to the participant.~~

~~(4) The board's decision to approve or not approve a proposed FLO is final unless the participant or alternate payee files a request for an administrative contested case hearing within ten days from the date the board sends notice of the decision. If an administrative hearing is properly requested, the final administrative decision must be made by the board after receiving the hearing examiner's proposed decision.~~

~~(5) Upon receipt of a certified copy of a stay from the issuing court or the Montana Supreme Court, the board will suspend further consideration or implementation of a proposed FLO. Unless otherwise directed by court order, the board will retain payments withheld prior to receipt of the stay and simultaneously resume making payments of participant(s) full benefit(s). The board will take further action only on receipt of a certified copy of an order directing such action. If the stay is lifted, the board will proceed with recognition, approval and implementation procedures as outlined herein. Any amount owing the alternate payee may be paid out of any payments owing the participant.~~

~~(6)~~(4) Costs of reviewing and administering ~~the~~ a FLO, including actuarial analysis and attorneys' fees, may be assessed by ~~the board~~ TRS and ~~billed to the party~~ charged in equal shares to the parties to the ~~filing the proposed~~ FLO ~~with the board~~, unless ~~another~~ one party is ~~designated in the FLO~~ ordered by the court to pay the costs. Amounts owing plus interest thereon at an annualized effective rate of 8% may be offset against payments to be received by the appropriate party.

~~(7)~~(5) An alternate payee may receive payment by electronic fund transfer upon submission of a properly executed form required by ~~the board~~ TRS.

~~(8)~~(6) An alternate payee must promptly inform ~~the board~~ TRS of any change of name or address.

~~(9)~~(7) ~~The Teachers' Retirement System~~ TRS may establish separate benefits for a member and an alternate payee.

Authorizing statute(s): 19-20-201, MCA

Implementing statute(s): 19-20-305, MCA

Reasonable Necessity Statement

Section (1) is amended for clarity and to reflect that the agency, not the board, administers FLOs per 19-20-305(13), MCA.

The previous language in (2) was inaccurate and conflicted with when the terms of a FLO can be given effect under 19-20-305, MCA.

Section (3) is amended to reflect that FLOs cannot be applied retroactively and to capture the procedures necessary to process the FLO.

The language in (4) is unnecessary and should be removed. A properly issued family law order is binding upon TRS. If an aggrieved party wishes to challenge a family law order, TRS does not have the jurisdiction to amend it. The only entity that can modify the family law order is a Montana state court.

The language in (5) is unnecessary and should be removed. A properly issued family law order is binding upon TRS. If an aggrieved party wishes to challenge a family law order, TRS does not have the jurisdiction to amend it. The only entity that can modify the family law order is a Montana state court.

The language in (6) is unnecessary and should be removed. TRS must comply with state law and appropriately issued court orders. If a FLO is properly filed and certified by a Montana state court, TRS does not have the jurisdiction to deny it.

REPEAL

The rules proposed to be repealed are as follows:

2.44.408 CREDITABLE SERVICE FOR ABSENCE WITHOUT PAY

Authorizing statute(s): 19-4-201 MCA

Implementing statute(s): 19-4-204 MCA

Reasonable Necessity Statement

This rule is being repealed because it is duplicative of 19-20-403, MCA.

2.44.512 CHANGE OF BENEFICIARY AND/OR CHANGE OF RETIREMENT OPTION

Authorizing statute(s): 19-4-201, 19-4-702, MCA

Implementing statute(s): 19-4-702, MCA

Reasonable Necessity Statement

This rule is being repealed because it is duplicative of 19-20-1008, MCA.

2.44.528 EXTRA DUTY COMPENSATION

Authorizing statute(s): 19-20-201, MCA

Implementing statute(s): 19-20-602, 19-20-605, 19-20-715, MCA

Reasonable Necessity Statement

This rule is being repealed because it is duplicative of 19-20-101, MCA.

Small Business Impact

TRS operates exclusively on behalf of past and present Montana public school teachers, the retirement system members, and those who are third-party beneficiaries of those retirement system members. TRS works in cooperation with public school administrators and boards of education across the state to administer the retirement system. Since TRS does not work directly with any small businesses, the small business impact analysis performed as required under 2-4-111, MCA, indicates that no small businesses are likely to be directly impacted by the proposed rule changes. In addition, the agency is not proposing any changes to TRS administrative rules that create a monetary impact on the retirement system members or their employers. The proposed changes to ARM 2.44.523 impact the method under which fees are assessed when the agency processes Family Law Orders under 19-20-305, MCA. The total value of those fees has not changed, and the method has been updated to reflect the practice of Montana state courts.

Bill Sponsor Notification

The bill sponsor contact requirements do not apply.

Interested Persons

TRS maintains a list of persons who have asked to be notified of any proposed changes to TRS administrative rules.
If you wish to be placed on the list of interested persons, submit your request via email to TRSoutreach@mt.gov.

Rule Reviewer

James Malizia

Approval

Shawn Graham - Teachers' Retirement System Executive Director

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-104.2

Summary

Weights and Measures Amendment of the NIST 130 Handbook

Previous Notice(s) and Hearing Information

On May 9, 2025, the Department of Labor and Industry published MAR Notice No. 2025-104.1 in Issue 9 of the 2025 Montana Administrative Register. A public hearing was held via remote conferencing on May 29, 2025.

Final Rulemaking Action – Effective July 1, 2025

AMEND AS PROPOSED

The agency has amended the following rule as proposed:

24.351.105 ADOPTION OF STATE WEIGHTS AND MEASURES STANDARDS AND RECOMMENDATIONS

Statement of Reasons

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

Comment 1: A commenter supported the proposed amendment, stating that restoring the one-pound waiver provides a workable solution for the regulation of Montana's fuel and refining industries. The commenter explained the one-pound waiver allows the industries to continue production of gasoline/ethanol blends at a cost that is not prohibitive to the industry or

consumers. The commenter explained that the cost-savings provided by the waiver also help surrounding states that rely on Montana's fuel distribution systems, and the consumers who rely on affordable fuel. Finally, the commenter praised the department's response when interested parties raised concerns about the regulations, stating the department provided thoughtful and clear leadership to address the issue.

Response 1: The department acknowledges the comment.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-117.2

Summary

Establishing rules for the contingent litigation fund

Previous Notice(s) and Hearing Information

On May 9, 2025, the Department of Labor and Industry published MAR Notice No. 2025-117.1 in Issue 9 of the 2025 Montana Administrative Register. A public hearing was held via remote conferencing on May 30, 2025.

Final Rulemaking Action – Effective July 1, 2025

ADOPT AS PROPOSED

The agency has adopted the following rule as proposed:

NEW RULE 1 (24.101.415) CONTINGENT LITIGATION FUND

Statement of Reasons

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

Comment 1: A commenter suggested that the contingent litigation fund fee would burden businesses due to frivolous litigation. The commenter further suggested a rule requiring the loser in litigation to pay attorney fees.

Response 1: The department does not agree that the contingent litigation fund will create frivolous litigation against licensees or the boards. In protecting the public, licensing boards and programs evaluate the totality of the circumstances surrounding a complaint before starting a disciplinary proceeding. The fund exists to cover disciplinary expenses which exceed $15,000 in an individual case, making its applicability limited. Further, the fund does not pay for general litigation by or on behalf of licensing boards or programs—only disciplinary cases.

With respect to transitioning liability for attorney fees, the change is outside the authority of the department and the scope of this rulemaking.

Comment 2: Multiple commenters supported the rulemaking and suggested the fee was a bargain to avoid the problems of potentially expensive litigation.

Response 2: The department appreciates the support for the rulemaking.

Contact

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(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner

MONTANA
ADMINISTRATIVE
REGISTER

BOARD OF OPTOMETRY
DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-137.2

Summary

House Bill (HB) 218 (2025) allows for optometrists to perform laser surgical procedures and requires the board to set qualifications for a laser surgery certificate in rule.

Previous Notice(s) and Hearing Information

On May 9, 2025, the Board of Optometry published MAR Notice No. 2025-137.1 in Issue 9 of the 2025 Montana Administrative Register. A public hearing was held via remote conferencing on June 3, 2025.

Final Rulemaking Action – Effective July 1, 2025

ADOPT AS PROPOSED

The agency has adopted the following rule as proposed:

NEW RULE 1 (24.168.801) EXPANDED SCOPE OF PRACTICE – SURGICAL CERTIFICATE REQUIREMENTS

AMEND AS PROPOSED

The agency has amended the following rules as proposed:

24.168.401 FEE SCHEDULE

24.168.2101 CONTINUING EDUCATION REQUIREMENTS – AUDIT

24.168.2301 UNPROFESSIONAL CONDUCT

Statement of Reasons

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

Comment 1: Numerous commenters supported the board's proposed rules.

Response 1: The board appreciates all comments received during the rulemaking process.

Comment 2: Several commenters commended the board on setting clear, appropriate certification standards.

Response 2: The board appreciates all comments received during the rulemaking process.

Comment 3: Numerous commenters appreciated the board's work on establishing the 32-hour education requirement and mirroring national standards.

Response 3: The board appreciates all comments received during the rulemaking process.

Comment 4: Several commenters objected to the board not requiring a standardized exam measuring competency in laser surgical procedures.

Response 4: The Legislature, not the board, sets the minimum qualifications, including an examination requirement. HB 218 requires didactic and clinical training requirements from an accredited optometry school or college and does not require passage of a national examination. The commenters' request requires a statutory change, not a rule.

Comment 5: Several commenters opposed the proposed new rule as requiring an unacceptably low standard of training, noting that ophthalmologists who perform the same procedures have much more extensive training, including supervised clinical work.

Response 5: While the commenters may disagree with the legislation allowing optometrists to perform these procedures, the board may not set more stringent requirements than HB 218. HB 218 did not set a requirement that optometrists attend medical school or work under the supervision of ophthalmologists. HB 218 requires that the necessary training include use of lasers for medically recognized and appropriate treatment of the human eye and be taught at an accredited optometry school or college.

Comment 6: Several commenters stated their belief that the board's proposed rulemaking was not in keeping with the board's public protection mission.

Response 6: The board respectfully disagrees with the commenters.

Comment 7: Several commenters suggested the board meet with the Board of Medical Examiners to discuss the administrative rules.

Response 7: The board thanks the commenter for the suggestion but declines to act on the request at this time.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

Rule Reviewer

Jennifer Stallkamp

Approval

Sarah Swanson, Commissioner

Approval

Dr. Ron Benner, President, Board of Optometry

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-26.2

Summary

Revision of certain rates in the 2025 Montana Prevailing Wage Rates

Previous Notice(s) and Hearing Information

On May 9, 2025, the Department of Labor and Industry published MAR Notice No. 2025-26.1 in Issue 9 of the 2025 Montana Administrative Register. A public hearing was held via remote conferencing on June 2, 2025.

Final Rulemaking Action – Effective July 1, 2025

AMEND AS PROPOSED

The agency has amended the following rule as proposed:

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

Statement of Reasons

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

Comment 1: A commenter supported the proposed amendments to the rules, but the commenter asked the department to include more details and duties in the definitions for each occupation listed in the prevailing wage publications. The commenter noted that the definitions for each occupation are difficult to find; for example, it is not clear what duties are included and are not included in the occupation for "carpenter." The commenter suggested

using the definitions for each occupation found in the Montana State Apprenticeship Standards Technical Instruction Guidelines and the Bureau of Labor's Definitions.

Response 1: The department acknowledges the comment. Each Montana prevailing wage publication includes a link to the Bureau of Labor Statistics website that defines each occupation listed in the publication. The link, http://www.bls.gov/oes/current/oes_stru.htm, is provided in Prevailing Wage Rates for Building Construction Services 2025, page 6, § Q. Occupations Definitions; Prevailing Wage Rates for Nonconstruction Services 2025, page 5, § O. Occupations Definitions; Prevailing Wage Rates for Heavy Construction Services 2025, page 5, § P. Occupations Definitions; Prevailing Wage Rates for Highway Construction Services 2025, page 5, § P. Occupations Definitions.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-29.2

Summary

Unemployment Insurance - Definitions - Claim Appeal Dates - Redetermination Requests - General Rule Clarification - Implementation of House Bill 652, 2023 Montana Legislature, Chapter 731

Previous Notice(s) and Hearing Information

On May 9, 2025, the Department of Labor and Industry published MAR Notice No. 2025-29.1 in Issue 9 of the 2025 Montana Administrative Register. A public hearing was held via remote conferencing on May 30, 2025.

Final Rulemaking Action – Effective July 1, 2025

AMEND AS PROPOSED

The agency has amended the following rules as proposed:

24.40.101 DEFINITIONS

24.40.105 TIME AND PROCEDURE FOR FILING INFORMATION

24.40.201 APPEAL OF DEPARTMENT DETERMINATIONS OR REDETERMINATIONS - REQUEST FOR HEARING

24.40.813 WEEKLY PAYMENT REQUESTS

24.40.823 WORK SEARCH CONTACTS

24.40.831 DETERMINATIONS OF BENEFIT ELIGIBILITY AND QUALIFICATION

24.40.833 REDETERMINATION

24.40.903 APPROVAL OF TRAINING BY THE DEPARTMENT

24.40.925 WORK NO LONGER SUITABLE

24.40.1501 CHARGING BENEFIT PAYMENTS TO EXPERIENCE-RATED EMPLOYERS - CHARGEABLE EMPLOYERS

24.40.1609 DUE DATE OF TAXES AND QUARTERLY REPORTS BY EMPLOYERS

ADOPT AS PROPOSED

The agency has adopted the following rule as proposed:

NEW RULE 1 (24.40.819) REEMPLOYMENT SERVICES – NOTICE – APPOINTMENTS

Statement of Reasons

No comments were received.

Contact

Department of Labor and Industry
(406) 444- 5466
laborlegal@mt.gov
Montana Relay: 711

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF LABOR AND INDUSTRY

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-30.2

Summary

2025 Updates to Medical Fee Schedules and Formulary - Implementation of House Bill 143 and Senate Bill 109 of the 2025 Montana Legislature

Previous Notice(s) and Hearing Information

On May 9, 2025, the Department of Labor and Industry published MAR Notice No. 2025-30.1 in Issue 9 of the Montana Administrative Register. A public hearing was held via remote conferencing on May 29, 2025.

Final Rulemaking Action – Effective July 1, 2025

AMEND AS PROPOSED

The agency has amended the following rules as proposed:

24.29.617 INITIAL ELECTION--INDIVIDUAL EMPLOYERS

24.29.618 INITIAL ELECTION--EMPLOYER GROUPS

24.29.721 VALUE OF EMPLOYER-FURNISHED HOUSING

24.29.801 ACCIDENT REPORTING

24.29.1401A DEFINITIONS

24.29.1433 FACILITY SERVICE RULES AND RATES

24.29.1538 CONVERSION FACTORS

24.29.1601 DEFINITIONS

24.29.1616 INCORPORATION BY REFERENCE AND UPDATES TO THE FORMULARY

24.29.3105 PETITION TO REOPEN MEDICAL BENEFITS

Statement of Reasons

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

Comment 1: Commenters spoke in favor of the proposed amendments to the rules. One commenter noted the proposed amendments are important because they update housing and lodging rates, the medical fee schedules, and the department's ODG drug formulary. The commenter further stated that the proposed amendments correct statutory references, update definitions, and clarify procedures for reopening benefits.

Response 1: The department acknowledges the comment.

Contact

Department of Labor and Industry
(406) 444-5466
laborlegal@mt.gov
Montana Relay: 711

Rule Reviewer

Quinlan L. O'Connor

Approval

Sarah Swanson, Commissioner

MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF TRANSPORTATION

NOTICE OF ADOPTION

MAR NOTICE NO. 2025-87.3

Summary

ARM 18.8.1502, 18.8.1503, and 18.8.1505 are revised annually to adopt the most current published federal motor carrier safety regulations (49 CFR parts 373-399), ensuring MDT compliance with commercial vehicle safety in accordance with the federal motor carrier safety regulations as listed in 61-10-154, MCA.

Previous Notice(s) and Hearing Information

On April 11, 2025, the department published MAR Notice No. 2025-87.1 pertaining to the proposed amendment of the above-stated rules in Issue Number 7 of the 2025 Montana Administrative Register.

On May 9, 2025, in Issue 9 of the 2025 Montana Administrative Register, the department published MAR Notice No. 2025-87.2, a supplemental notice of proposed rulemaking that extended the comment period.

Final Rulemaking Action – Effective June 28, 2025

AMEND AS PROPOSED

The agency has amended the following rules as proposed:

18.8.1502 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS

18.8.1503 TRANSPORTATION OF HAZARDOUS MATERIALS

AMEND WITH CHANGES

The agency has amended the following rule with the following changes from the original proposal, stricken matter interlined, new matter underlined:

18.8.1505 SAFETY INSPECTION PROGRAM: PURPOSE AND OUT-OF-SERVICE CRITERIA

(1) remains as proposed.

(2) In addition to the federal regulations adopted in ARM 18.8.1502, the safety inspection program will follow Commercial Vehicle Safety Alliance (CVSA), North American Standard Out-of-Service Criteria (June 25 ~~April 1~~, 2025), incorporated by reference. A copy of the North American Standard Out-of-Service Criteria may be obtained from the Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770-6319 or at www.cvsa.org.

(3) remains as proposed.

Authorizing statute(s): 61-10-155, MCA

Implementing statute(s): 61-10-154, MCA

Statement of Reasons

The agency has considered the comments and testimony received. A summary of the comments received, and the agency's responses are as follows:

Comment 1: On April 28, 2025, President Trump issued an executive order, Enforcing Commonsense Rules of the Road for America's Truck Drivers, which rescinded ELP Testing Enforcement Policy MC-ECE-2016-006, issued on June 16, 2016, and revised the Commercial Vehicle Safety Alliance (CVSA) Out of Service Criteria found in 49 CFR 3895.4. This change was approved by the CVSA Board of Directors with an effective date of June 25, 2025.

Response 1: The department recognizes the change to 49 CFR 3895.4, and revises ARM 18.8.1505 as shown above.

Comment 2: A commenter requested a summary of the CFR updates and how they could improve safety.

Response 2: The program provided the requested information.

Contact

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Rule Reviewer

Valerie A. Balukas

Approval

Christopher Dorrington

MONTANA
ADMINISTRATIVE
REGISTER

OFFICE OF THE GOVERNOR

VACANCIES AND APPOINTMENTS

JUNE 2025

UPCOMING VACANCIES - JULY 2025

- Governor's Advisory Council on Aging
- Montana Agriculture Development Council (Growth Through Agriculture Program)
- Alternative Health Care Board
- Board of Chiropractors
- Board of Clinical Laboratory Science Practitioners
- Commission on Community Service
- Montana Criminal Justice Oversight Council
- Interstate Commission on Educational Opportunity for Military Children
- State Electrical Board
- Board of Professional Engineers and Professional Land Surveyors
- Future Fisheries Review Panel
- Geospatial Information Advisory Council
- Historical Society Board of Trustees
- Libby Asbestos Superfund Oversight Committee
- State Library Commission
- Mental Disabilities Board of Visitors

- Montana Digital Academy
- Board of Optometry
- Petroleum Tank Release Compensation Board
- Board of Pharmacy
- Board of Physical Therapy Examiners
- Board of Plumbers
- Montana Pulse Crop Committee
- Board of Radiologic Technologists
- Board of Real Estate Appraisers
- Board of Realty Regulation
- Board of Regents of Higher Education
- Board of Speech-Language Pathologists and Audiologists
- Montana State Workforce Innovation Board
- Committee on Telecommunications Access Services for Persons With Disabilities
- Tourism Advisory Council
- Underground Facility Protection Advisory Council
- Board of Water Well Contractors
- Western Montana Conservation Commission
- Teachers' Retirement Board
- Private Land Public Wildlife Advisory Council

https://governor.mt.gov/boards_appointments/

RECENT APPOINTMENTS

- Fish and Wildlife Commission
    - Brian Cebull
        - 5/22/25 - 1/2/29
        - Predecessor: Reappointed
        - Qualification: Region 5
    - Bill Lane
        - 5/22/25 - 1/2/29
        - Predecessor: Reappointed
        - Qualification: Region 7
    - KC Walsh
        - 5/22/25 - 1/2/29
        - Predecessor: Reappointed
        - Qualification: Region 4
    - Ian Wargo
        - 5/22/25 - 1/2/29
        - Predecessor: Patrick Tabor
        - Qualification: Region 1